

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

\* \* \* \* \*  
UNITED STATES OF AMERICA \*  
vs. \* Case No. 2:18-cr-780  
QUENTIN JOHN FISHBURNE \* March 3, 2020  
\* \* \* \* \*

REPORTER'S OFFICIAL TRANSCRIPT OF THE  
JURY TRIAL - DAY 2 HELD BEFORE  
THE HONORABLE DAVID C. NORTON  
UNITED STATES DISTRICT JUDGE  
MARCH 3, 2020

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9 Proceedings recorded by mechanical stenography using  
10 computer-aided transcription software.  
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Tana J. Hess, CRR, RMR, FCRR  
U.S. District Court Reporter  
District of South Carolina

9 : 4 9 A M 1 (Call to order of the Court.)

9 : 4 9 A M 2 THE COURT: All right. Take your seats. Thank you.  
9 : 5 0 A M 3 We got your amendments, and we accommodated everybody's  
9 : 5 0 A M 4 additions, and we're not going to do the obstruction charge,  
9 : 5 0 A M 5 because there's no evidence whatsoever of any obstruction by  
9 : 5 0 A M 6 Mr. Fishburne.

9 : 5 0 A M 7 MR. SCHOEN: Yes, Your Honor. I think that in -- I  
9 : 5 0 A M 8 accept the Court's ruling, but I think that in -- in  
9 : 5 0 A M 9 establishing a conspiracy, we have to show criminal intent for  
9 : 5 0 A M 10 both Ms. Ellison and Mr. Fishburne, and so what I would argue  
9 : 5 0 A M 11 to the Court and ask just as a general principle is that we be  
9 : 5 0 A M 12 allowed to use some of this evidence to establish her criminal  
9 : 5 0 A M 13 intent, not his, and that that be delineated using a limiting  
9 : 5 0 A M 14 instruction.

9 : 5 0 A M 15 THE COURT: I guess you can argue that.

9 : 5 0 A M 16 MR. SCHOEN: I can argue the fact that she came in  
9 : 5 0 A M 17 and covered the stuff up?

9 : 5 0 A M 18 THE COURT: Yeah.

9 : 5 0 A M 19 MR. SCHOEN: Okay. Judge there's one other issue I  
9 : 5 1 A M 20 do want to bring to the Court's attention, and it's never fun  
9 : 5 1 A M 21 when you discover something that you should have discovered a  
9 : 5 1 A M 22 long time ago. When I was doing my legal research this morning  
9 : 5 1 A M 23 when we were doing the last few things on the jury charge, I  
9 : 5 1 A M 24 noticed a concept called Wharton's Rule that essentially  
9 : 5 1 A M 25 holds --

9 : 5 1 A M 1 MR. SHAHID: I remember that too.

9 : 5 1 A M 2 MR. SCHOEN: That essentially holds that you cannot  
9 : 5 1 A M 3 convict a person of a conspiracy if the -- if the underlying  
9 : 5 1 A M 4 crime is a crime that requires two people to commit, and the  
9 : 5 1 A M 5 conspiracy you're alleging is just those two people, and so in  
9 : 5 1 A M 6 some ways I am concerned about us arguing that the transfer of  
9 : 5 1 A M 7 the firearm from Ms. Ellison to Mr. Fishburne is a basis for a  
9 : 5 1 A M 8 conspiracy. I think we've alleged in addition to that straw  
9 : 5 1 A M 9 purchasing, and I think that -- that's a crime that requires  
9 : 5 1 A M 10 one person. It's her intent.

9 : 5 1 A M 11 THE COURT: Okay.

9 : 5 1 A M 12 MR. SCHOEN: And so my suggestion to the Court --  
9 : 5 2 A M 13 obviously if Your Honor thinks otherwise, I'm happy to yield to  
9 : 5 2 A M 14 superior legal knowledge.

9 : 5 2 A M 15 THE COURT: I don't know about that.

9 : 5 2 A M 16 MR. SCHOEN: But I don't -- I mean, I think our  
9 : 5 2 A M 17 obligation as the Government is to be forthright with the Court  
9 : 5 2 A M 18 as to what we think the law is, and I'm concerned that a  
9 : 5 2 A M 19 conviction based on -- or a conspiracy conviction based on the  
9 : 5 2 A M 20 idea that she transferred a gun to him and the two of them have  
9 : 5 2 A M 21 to agree about that, it's almost -- it's almost difficult to  
9 : 5 2 A M 22 conceive of how you would transfer a gun to somebody without  
9 : 5 2 A M 23 conspiring to transfer a gun to somebody, because it requires  
9 : 5 2 A M 24 you to say, "Here you go," and "I agree."

9 : 5 2 A M 25 THE COURT: Isn't there a lot of law on that about

9 : 5 2 A M 1 hand-to-hand purchases are not -- is not a conspiracy? You  
9 : 5 2 A M 2 give me crack. That's not a conspiracy.

9 : 5 2 A M 3 MR. SCHOEN: That's not a conspiracy, right, because  
9 : 5 2 A M 4 it requires two people and only two people. So I think what  
9 : 5 2 A M 5 we'd ask the Court to do to protect the record is to give  
9 : 5 2 A M 6 instructions only on the straw purchasing --

9 : 5 2 A M 7 THE COURT: Okay.

9 : 5 2 A M 8 MR. SCHOEN: -- portion of the conspiracy, if that's  
9 : 5 3 A M 9 agreeable.

9 : 5 3 A M 10 MR. SHAHID: Or just dismiss the conspiracy. That  
9 : 5 3 A M 11 puts us -- I was hoping you were heading in that direction.  
9 : 5 3 A M 12 Too optimistic.

9 : 5 3 A M 13 THE COURT: I was thinking that, too. We'll just  
9 : 5 3 A M 14 delete the thing about -- only have the straw purchase.  
9 : 5 3 A M 15 Looking back at the --

9 : 5 3 A M 16 MR. SCHOEN: Judge, I apologize for that.

9 : 5 3 A M 17 THE COURT: That's all right.

9 : 5 3 A M 18 MR. SCHOEN: That we didn't get that earlier.

9 : 5 3 A M 19 THE COURT: No, that's no problem. All right. If  
9 : 5 3 A M 20 you look at the -- page 12, bottom of page 13, I think you want  
9 : 5 3 A M 21 me to delete 1A.

9 : 5 3 A M 22 MR. SCHOEN: Delete A.

9 : 5 4 A M 23 THE COURT: Delete 1 --

9 : 5 4 A M 24 MR. SCHOEN: 1A.

9 : 5 4 A M 25 THE COURT: On line 21, delete lines 21, 22 on page

9 : 5 4 A M 1 13, and 1 and 2 on page 14.

9 : 5 4 A M 2 MR. SCHOEN: Correct, as well as on page 12, the end  
9 : 5 4 A M 3 of line 21, it starts, "Title 18 USC Section 922(d)" --

9 : 5 4 A M 4 THE COURT: Okay.

9 : 5 4 A M 5 MR. SCHOEN: -- "makes it a crime to sell or  
9 : 5 4 A M 6 otherwise transfer."

9 : 5 4 A M 7 THE COURT: All right. Delete --

9 : 5 4 A M 8 MR. SHAHID: Go back to that again, Chris. I'm  
9 : 5 4 A M 9 sorry.

9 : 5 4 A M 10 MR. SCHOEN: That's bottom of page 12, line 19 -- or  
9 : 5 4 A M 11 I'm sorry. Bottom of page 12, end of 21 it starts, "Title 18  
9 : 5 4 A M 12 USC Section 922 makes it a crime to sell or otherwise  
9 : 5 4 A M 13 transfer."

9 : 5 4 A M 14 MR. SHAHID: We're going to strike that?

9 : 5 4 A M 15 THE COURT: Strike lines -- last part of line 21,  
9 : 5 4 A M 16 line 22, 23, 24, and the first six words in -- on page 13, line  
9 : 5 5 A M 17 1?

9 : 5 5 A M 18 MR. SCHOEN: Yes. And then on --

9 : 5 5 A M 19 MR. SHAHID: You're going to strike all of line 1 on  
9 : 5 5 A M 20 page 13?

9 : 5 5 A M 21 MR. SCHOEN: Up until the point where it says, "Title  
9 : 5 5 A M 22 18," end that first clause.

9 : 5 5 A M 23 MR. SHAHID: Got it.

9 : 5 5 A M 24 MR. SCHOEN: And then in Count 2 on page 13,  
9 : 5 5 A M 25 "Unlawfully knowingly" -- "knowingly and willfully violate,"

9 : 5 5 A M 1 strike out Section 922(d) out of line 10, strike out "to sell  
9 : 5 5 A M 2 or otherwise transfer firearms and ammunition."

9 : 5 5 A M 3 MR. SHAHID: Still on line 10?

9 : 5 5 A M 4 MR. SCHOEN: Starting on line 10 and carrying through  
9 : 5 5 A M 5 line 13 after -- up to the words "one year".

9 : 5 6 A M 6 THE COURT: So that charge will say, "To execute a  
9 : 5 6 A M 7 scheme to knowingly and willfully violate Section 922(a)(6);  
9 : 5 6 A M 8 that is, to make false statement to licensed firearm dealers in  
9 : 5 6 A M 9 connection with acquisition of firearms."

9 : 5 6 A M 10 MR. SCHOEN: Yes, Your Honor.

9 : 5 6 A M 11 THE COURT: Okay. Any problem with that?

9 : 5 6 A M 12 MR. SHAHID: No, sir.

9 : 5 6 A M 13 THE COURT: Okay.

9 : 5 6 A M 14 MR. SCHOEN: Trying to see if there's any other  
9 : 5 6 A M 15 references. There is a portion that I asked the Court to add  
9 : 5 6 A M 16 in, and I think that that also gave an example of them  
9 : 5 6 A M 17 transferring firearms, and if that was added that would also  
9 : 5 6 A M 18 need to be removed.

9 : 5 6 A M 19 THE COURT: 16. 16, line 19?

9 : 5 6 A M 20 MR. SHAHID: On page 19?

9 : 5 6 A M 21 THE COURT: Page 16, line 19.

9 : 5 7 A M 22 MR. SCHOEN: On page 16, line 19.

9 : 5 7 A M 23 MR. SHAHID: So that whole line 19 comes out?

9 : 5 7 A M 24 THE COURT: Through 22, I think.

9 : 5 7 A M 25 MR. SHAHID: Through the word "himself" on 22?

9 : 5 7 A M 1 THE COURT: So if I understand correctly, the charge  
9 : 5 7 A M 2 starting on line 17 on page 16, "In your consideration of the  
9 : 5 7 A M 3 evidence, you should determine whether or not Mr. Fishburne  
9 : 5 7 A M 4 knowingly took part in a conspiracy to make false statements  
9 : 5 7 A M 5 to" -- so we're deleting lines 19, 20, 21, 22, and the first  
9 : 5 7 A M 6 half of line 23.

9 : 5 7 A M 7 MR. SCHOEN: Yes. And then it continues onto the  
9 : 5 7 A M 8 next page.

9 : 5 7 A M 9 THE COURT: Okay.

9 : 5 7 A M 10 MR. SCHOEN: "In connection with the acquisition of  
9 : 5 7 A M 11 firearms, the Government can establish the conspiracy by  
9 : 5 7 A M 12 showing an agreement between Mr. Fishburne and Ms. Ellison,"  
9 : 5 8 A M 13 and then beginning that next -- that next word, "that  
9 : 5 8 A M 14 Ms. Ellison," on page 17, line 3, strike out, "would transfer  
9 : 5 8 A M 15 firearms to Mr. Fishburne knowing he was prohibited from  
9 : 5 8 A M 16 possessing them," and it would instead say, "An agreement  
9 : 5 8 A M 17 between Mr. Fishburne and Ms. Ellison," and it would pick up on  
9 : 5 8 A M 18 line 5, "that Ms. Ellison would make false statements with  
9 : 5 8 A M 19 regard to the acquisition of firearms by, for example,  
9 : 5 8 A M 20 indicating that she was the actual purchaser of the firearm  
9 : 5 8 A M 21 when, in fact, she was buying the firearm for Mr. Fishburne."

9 : 5 8 A M 22 THE COURT: Okay.

9 : 5 8 A M 23 MR. SHAHID: So beginning on line 2, that first full  
9 : 5 8 A M 24 sentence?

9 : 5 8 A M 25 THE COURT: The last three words in the first



9 : 5 8 A M 1 sentence on line 2.

9 : 5 8 A M 2 MR. SCHOEN: It's line 3, the last three words, "that  
9 : 5 8 A M 3 Ms. Ellison would transfer firearms to Mr. Fishburne, knowing  
9 : 5 8 A M 4 he was prohibited from possessing them or an agreement." That  
9 : 5 8 A M 5 all would be stricken.

9 : 5 8 A M 6 THE COURT: Okay. So it's going to say, "The  
9 : 5 9 A M 7 Government can establish a conspiracy by showing an agreement  
9 : 5 9 A M 8 between Mr. Fishburne and Ms. Ellison that Ms. Ellison would  
9 : 5 9 A M 9 make false statements," et cetera, et cetera, et cetera.

9 : 5 9 A M 10 MR. SCHOEN: Yes, Your Honor.

9 : 5 9 A M 11 THE COURT: Okay. Okay. And we'll change the word  
9 : 5 9 A M 12 on line 10 from "either" to "this," so there's not an "either"  
9 : 5 9 A M 13 anymore.

9 : 5 9 A M 14 MR. SCHOEN: On line 10?

9 : 5 9 A M 15 THE COURT: Line 10.

9 : 5 9 A M 16 MR. SCHOEN: Correct, Your Honor.

9 : 5 9 A M 17 THE COURT: "Beyond a reasonable doubt with respect  
9 : 5 9 A M 18 to this conspiracy, you should find."

1 0 : 0 0 A M 19 MR. SCHOEN: Also, Your Honor, on the description of  
1 0 : 0 0 A M 20 Count 2, page 12, line 17, just changing the title of the  
1 0 : 0 0 A M 21 heading.

1 0 : 0 0 A M 22 THE COURT: Okay. What line are you talking about on  
1 0 : 0 0 A M 23 page 12?

1 0 : 0 0 A M 24 MR. SCHOEN: On page 12, Count 2, Line 17 is the  
1 0 : 0 0 A M 25 heading. If you just remove the words to "sell or transfer

1 firearms to a felon."

2 THE COURT: Okay. Conspiracy to make false  
3 statements only, yeah.

4 MR. SCHOEN: I think that's it. Thank you for  
5 accommodating the changes.

6 THE COURT: No problem. Thank you for bringing that  
7 up.

8 MR. SCHOEN: Yes, Your Honor.

9 THE COURT: That's what you're supposed to do.

10 MR. SHAHID: And, Judge --

11 THE COURT: That's what Mr. Bourne taught you to do.

12 MR. SCHOEN: Yes, he did.

13 MR. SHAHID: And then I haven't read the whole thing  
14 yet, but you did say we included the language about that you  
15 have to have a conspiracy of two or more people? I just  
16 haven't read it. I'm just double-checking.

17 THE COURT: Let me make sure, because you can't  
18 conspire with yourself. I think if you look at page 13, line  
19 18, it says that "two or more persons entered into an unlawful  
20 agreement starting," yadda, yadda, yadda.

21 MR. SHAHID: That's good.

22 THE COURT: Okay.

23 MR. SHAHID: Thank you.

24 THE COURT: All right. Anything else?

25 MR. SCHOEN: One moment, Your Honor. I'm --

1 (Pause.)

2 MR. SCHOEN: Your Honor, with regard -- there's one  
3 more place where I think the transferring language appears, and  
4 that's on page 17 --

5 THE COURT: Okay.

6 MR. SCHOEN: -- in connection with the supplemental  
7 instruction on evidence regarding the Bersa 9 millimeter. On  
8 line 20, it would say, "evaluating her intent in purchasing  
9 firearms and/or transferring" would be struck -- would be --

10 THE COURT: Okay. We'll just strike that.

11 MR. SCHOEN: And I think it may appear also on page  
12 18, line 2.

13 THE COURT: Okay. Okay.

14 MR. SCHOEN: Thank you, Your Honor.

15 THE COURT: Sure. Anything else, Mr. Shahid?

16 MR. SHAHID: No, sir.

17 THE COURT: Verdict form good?

18 MR. SHAHID: (Nodding head affirmatively.)

19 THE COURT: So with those changes, nobody has an  
20 objection to the final charge; is that correct?

21 MR. SCHOEN: No, Your Honor.

22 MR. SHAHID: Nope, no objection.

23 THE COURT: Okay. How about tell me what do we have  
24 for our listening pleasure here this morning?

25 MR. SHAHID: We're going to rest.

10:04 AM 1 THE COURT: Okay. All right. So there will be no --  
2 all right. Mr. Fishburne, you and your lawyer, like I talked  
3 to you about last night, you know you have a right to testify  
4 to this jury if you want to.

10:04 AM 5 THE DEFENDANT: Yes, sir.

10:04 AM 6 THE COURT: You understand you have a constitutional  
7 right not to testify if you don't want to?

10:04 AM 8 THE DEFENDANT: Yes, sir.

10:04 AM 9 THE COURT: You also understand that if you chose not  
10 to testify, the jury could not think that you were guilty based  
11 on the fact that you had exercised your constitutional right  
12 not to testify?

10:04 AM 13 THE DEFENDANT: Yes, sir.

10:04 AM 14 THE COURT: And you remember I told the jury that in  
15 the opening, and I'll tell them that again in closing. So  
16 after discussing it with your lawyer, your decision is not to  
17 testify; is that correct?

10:04 AM 18 THE DEFENDANT: Yes, sir.

10:04 AM 19 THE COURT: Okay. Do you have any questions about  
20 that with your lawyer or the Court?

10:05 AM 21 MR. GEEL: (Shaking head negatively.)

10:05 AM 22 MR. SHAHID: You have to say "yes" or "no" so she can  
23 write it down.

10:05 AM 24 THE DEFENDANT: I'm good.

10:05 AM 25 THE COURT: All right. Your concerned about Count 3.

1 we don't give the indictment to the jury.

2 MR. SHAHID: You're not?

3 THE COURT: No, never have. So that is the old days  
4 back when you were there --

5 MR. SHAHID: Ancient history.

6 THE COURT: -- that's Judge Blatt did that.

7 MR. SHAHID: Yes, he did. We were in Judge Blatt's  
8 courtroom, so I thought we were just going to follow his -- as  
9 to Count 3, though, Judge, are we dismissing that?

10 MR. SCHOEN: I believe that was already dismissed as  
11 to Mr. Fishburne. It's not been dismissed as to Ms. Ellison,  
12 and Count 3, if I'm not mistaken, is the straw purchasing which  
13 is what we're proving the conspiracy. We're not proving the  
14 substantive charge against Mr. Fishburne. We're proving the  
15 conspiracy.

16 MR. SHAHID: I don't know -- and maybe I was wrong on  
17 this. I don't know if the jury has been told that.

18 THE COURT: Told what?

19 MR. SHAHID: The instructions talk about elements on  
20 Counts 1, 2, and 5 obviously. If they're not specifically  
21 instructed that Count 3 does not apply to Mr. Fishburne  
22 anymore --

23 THE COURT: They don't know anything about whether  
24 there's a Count 3 or not. We -- how would the jury know?

25 MR. SHAHID: That's right. They're not getting the

1 indictment.

2 THE COURT: Yeah, they're not getting it, and then  
3 nobody mentioned it in their opening, and I didn't mention it  
4 in my opening, so what they're going to do is just get the  
5 verdict form to Counts 1, 2, and 5.

6 MR. SHAHID: That's fine.

7 THE COURT: And no indictment. Okay. All right.  
8 Anything else?

9 MR. SCHOEN: No, Your Honor.

10 THE COURT: Okay. We'll be at ease at the copy  
11 machine, and then we'll start again at 10:30.

12 MR. SCHOEN: Thank you.

13 THE COURT: So you're going to stand up and rest?

14 MR. SHAHID: Yes, sir.

15 THE COURT: Okay. And y'all will be ready to start  
16 arguing at 10:30?

17 MS. HENDERSON: Yes, sir.

18 THE COURT: Okay. Sounds good.

19 MR. SHAHID: Thanks, Judge.

20 THE COURT: Okay. We're going to change -- on the  
21 verdict form on Count 2, we're going to delete 922(a)(6)?

22 MR. SCHOEN: The 922(d).

23 THE LAW CLERK: Yes.

24 MR. SCHOEN: Not the (a)(6).

25 THE LAW CLERK: Yes.

1 (Recess from 10:06 a.m. to 11:05 a.m.)

2 (Call to order of the Court.)

3 THE COURT: Take your seats. Thanks. Our missing  
4 juror showed up. Couldn't find a parking place. It's the City  
5 of Charleston. I wish the City Council would do something  
6 about that.

7 MR. SHAHID: Your Honor, if they would just use the  
8 city garage, we would not have this problem whatsoever.

9 THE COURT: That's your platform next time you run,  
10 Mr. Shahid.

11 MR. SHAHID: Parking for jurors all the way around.

12 THE COURT: Absolutely. Parking for everybody.

13 MR. SHAHID: You've got parking, Judge.

14 THE COURT: Okay. Anything before we bring the jury  
15 in?

16 MR. SHAHID: You want me to rest in front of the  
17 jury, I presume?

18 THE COURT: Rest, and then I'll recognize -- I'll  
19 tell the jury what's going to happen now, and we'll go from  
20 there. Whose going first?

21 MR. SCHOEN: She'll be closing. I'll do rebuttal.

22 THE COURT: Okay. Good. Ready? All right.

23 (Jury in at 11:07 a.m.)

24 THE COURT: Okay. Ladies and gentlemen, welcome  
25 back. I apologize for the lack of parking. It's downtown

1 Charleston. It's -- I know it's a problem. wish we could do  
2 something about it. we can't make any more land unfortunately.  
3 we can't go up either, because you can't go up very high.  
4 So -- but we're going to continue with the case at this time,  
5 so Mr. Shahid?

6 MR. SHAHID: Your Honor, the defense rests.

7 THE COURT: Okay. All right. Ladies and gentlemen  
8 of the jury, you've now heard all the evidence in the case, and  
9 right now the lawyers will start their final -- give you their  
10 final arguments to say what they thought they proved, and so  
11 after that, we'll probably take a break. I'll let you go in  
12 and order your lunch, and then we will come back, and give you  
13 the final charge and the law, and you'll be able to take the  
14 exhibits and everything back in with you, okay?

15 The Government has the burden of proving its  
16 case beyond a reasonable doubt, so the Government will give its  
17 opening argument, then Mr. Shahid will give his closing  
18 argument, and then the Government will give their short  
19 rebuttal. So please pay attention to the lawyers and recognize  
20 them for their closing argument.

21 Ms. Henderson?

22 MS. HENDERSON: Thank you, Your Honor. May it please  
23 the Court.

24 Good morning. Ms. Murray, can I have a  
25 connection, please?



11:08 AM 1 COURTROOM DEPUTY: Yes.

11:09 AM 2 MS. HENDERSON: Thank you. Yesterday my co-counsel,  
11:09 AM 3 Chris Schoen, told you something to help you remember what this  
11:09 AM 4 case is really all about. He told you three crime scenes, two  
11:09 AM 5 guns, one purchaser, and zero reasonable doubt.

11:09 AM 6 Yesterday you heard a lot about the burden of  
11:09 AM 7 proof in criminal cases and that the Government bears the  
11:09 AM 8 burden to prove the Defendant's guilt beyond a reasonable  
11:09 AM 9 doubt. This is not a burden that we shy away from. In fact,  
11:09 AM 10 it's a burden that we embrace. Over the next few minutes, I  
11:09 AM 11 want to walk you through the crimes that the Defendant, Quentin  
11:09 AM 12 Fishburne, is being charged with, the elements that the  
11:09 AM 13 Government has to prove to you in order to convict  
11:09 AM 14 Mr. Fishburne of those crimes, and then the evidence that you  
11:09 AM 15 heard yesterday that proves each of those elements.

11:09 AM 16 I think you'll find when you're done that the  
11:09 AM 17 Government has not only embraced that burden, but we've met it.

11:10 AM 18 Now, let's talk about what Mr. Fishburne is  
11:10 AM 19 charged with. He is charged with three separate crimes. One,  
11:10 AM 20 being a felon in possession of a firearm on May 2nd, 2014; two,  
11:10 AM 21 being a felon in possession of firearm ammunition on March  
11:10 AM 22 31st, 2018; and three, conspiring with Renata Ellison to  
11:10 AM 23 knowingly make false statements in connection with the purchase  
11:10 AM 24 of a firearm.

11:10 AM 25 I want to start with Counts 1 and 5. These are

1 the counts for the felon in possession of a firearm. What does  
2 the Government have to prove in order for you to convict  
3 Mr. Fishburne of Counts 1 and 5? First, that Quentin Fishburne  
4 is a felon. The defense and the Government have stipulated to  
5 this fact. This element is not an issue in this trial and has  
6 been proven to you beyond a reasonable doubt.

7 Second, that Quentin Fishburne knows he is a  
8 felon. The defense and Government have stipulated to this  
9 fact. This fact is not an issue in this trial and has been  
10 proved -- this element, I'm sorry -- is not an issue in this  
11 trial and has been proven to you beyond a reasonable doubt.

12 Third, that the guns and ammunition traveled at  
13 some point in and affecting interstate commerce. Again, the  
14 defense and Government have stipulated to this fact. This  
15 element is not an issue in this trial and has been proven to  
16 you beyond a reasonable doubt.

17 The fourth element is the only element in issue  
18 at this trial, and that is whether or not Quentin Fishburne  
19 knowingly possessed those firearms and ammunition.

20 Now, I want to talk to you, before we get into  
21 the actual crimes and the evidence, what actually possession is  
22 and what it's not. I want to clear something up. Ownership  
23 does not equal possession. You do not have to own something in  
24 order to possess it.

25 Quentin Fishburne did not own either of the cars

1 he was driving on May 2nd, 2014, or March 31st, 2018. In fact,  
2 Agent Callahan told you that Mr. Fishburne doesn't own any  
3 cars, but he was still clearly in possession of those cars. He  
4 was driving them. He had control of them. He was in  
5 possession of them.

6 Your name does not have to appear on the  
7 purchase paperwork for a firearm in order for you to possess  
8 that firearm. In fact, if that was the standard, ladies and  
9 gentlemen, no felon would ever be convicted of being a felon in  
10 possession of a firearm, because felons cannot lawfully  
11 purchase firearms. Their names will never appear on the  
12 purchase paperwork. So, again, ownership does not equal  
13 possession.

14 So then what is possession under the law? Judge  
15 Norton is going to charge you that a person possesses an object  
16 if he knowingly has the ability and intention to exercise  
17 control over the object, either directly or through others. A  
18 person may possess an object even if he is not in physical  
19 contact with it and even if he does not own it. More than one  
20 person may possess an object. If two or more persons share  
21 possession, that is called joint. If one person possesses the  
22 object, that is called sole possession. The term possess  
23 includes both joint and sole possession.

24 So with that definition in mind, let's look at  
25 Count 5, which is the May 2nd, 2014, traffic stop involving the

1 Jimenez 9 millimeter and the evidence that was presented to you  
2 yesterday that tends to prove that Quentin Fishburne knowingly  
3 possessed that Jimenez 9 millimeter.

4 First, when Officer Langenfeld tried to initiate  
5 a traffic stop on the vehicle that Mr. Fishburne was driving,  
6 Mr. Fishburne, instead of stopping like most people do, took  
7 off. He fled. Why? Why are you going to flee if you're not  
8 doing something wrong? Why are you going to flee if you don't  
9 have something you're not supposed to have? When the officer  
10 continued to pursue him despite his fleeing, he and his  
11 passenger both waved firearms in the air in an attempt to back  
12 the officer off. Officer Langenfeld told you that he saw them  
13 wave something in their hands and that in his training and  
14 experience as a law enforcement officer, there was no doubt in  
15 his mind that it was firearms. In fact, he radioed that out to  
16 the other officer they had something in their hands to warn  
17 them, and he backed off because he wasn't sure what was about  
18 to happen.

19 He still continues to pursue them. What does  
20 Mr. Quentin do, Mr. Fishburne do? He drives to familiar  
21 territory, jumps out of the vehicle, and flees yet again. Then  
22 what happens? Lo and behold, Officer Langenfeld was correct.  
23 They find two firearms in that vehicle.

24 One was stolen. The other was purchased by  
25 Quentin Fishburne's girlfriend, Renata Ellison. Renata Ellison

1 is not present during that traffic stop. It is not Renata  
2 Ellison's car. In fact, it's Mr. Fishburne's wife's car.  
3 She's also not present.

4 The defense would have you believe that  
5 Mr. Fishburne -- a gun purchased by Mr. Fishburne's girlfriend  
6 manages to get into his wife's car without him having any  
7 knowledge of it. Ladies and gentlemen, when you look at all  
8 the evidence that was presented yesterday as to Count 5, it is  
9 clear that Mr. Fishburne knowingly possessed that Jimenez 9  
10 millimeter on May 2nd, 2014.

11 Let's move to Count 1, which is the March 31st,  
12 2018, traffic stop involving the Smith & Wesson .40 caliber.  
13 What evidence did you receive yesterday that proves that  
14 Mr. Fishburne knowingly possessed that Smith & Wesson .40  
15 caliber? First, remember when Mr. Fishburne entered the  
16 traffic checkpoint, he would barely roll the window down to  
17 engage with the officer. When the officers told him that they  
18 were going to search the car, the first thing out of his mouth,  
19 "Anything you find in here is not mine." What did  
20 Officer Duboise tell you? As an officer, the second you hear  
21 that, you know you're about to find something. A statement  
22 like that screams guilt.

23 Quentin Fishburne is the only occupant of that  
24 vehicle. The gun is located under the driver's seat where  
25 Mr. Fishburne had been seated.

1                   We're going to come back to this letter in a  
2 little bit, but I want to touch on it here. Remember Renata  
3 Ellison when she wrote the letter and then recanted the letter,  
4 she said to Agent Callahan, "I don't want to get in trouble for  
5 something Quentin did." Something Quentin did, not her.

6                   The fact that that same gun was used in a  
7 shooting in 2015 where Quentin Fishburne was present and  
8 convicted of a crime in connection with. There is no evidence  
9 that Renata Ellison was present at either of those events.

10                  Ladies and gentlemen, again, when you look at  
11 all the evidence that was presented as to Count 1 regarding the  
12 Smith & Wesson .40 caliber, it is clear that Mr. Fishburne  
13 knowingly possessed that gun beyond a reasonable doubt on March  
14 31st, 2018.

15                  So let's move to Count 2. This is the  
16 conspiracy to conspire with Renata Ellison to knowingly make  
17 false statements in connection with the purchase of a firearm.

18                  Now, Judge Norton is going to charge you that in  
19 order to find the Defendant guilty on this count, the  
20 Government has to prove that two or more persons entered an  
21 unlawful agreement starting at a time unknown and continuing  
22 through August 15th, 2018, to commit the crime of making false  
23 statements to licensed firearms dealers in connection with the  
24 acquisition of firearms; that Quentin Fishburne knew of the  
25 conspiracy; and that Quentin Fishburne knowingly and

1 voluntarily became a part of this conspiracy.

2 Let's break that down. Basically that there was  
3 an agreement between Renata Ellison and Quentin Fishburne to  
4 purchase a firearm and lie about it on the ATF form, that  
5 Quentin knew about the agreement, and that he voluntarily  
6 entered the agreement.

7 So let's say Renata Ellison knows Quentin  
8 Fishburne is a felon. Quentin Fishburne knows he's a felon.  
9 Both of those facts have been established. Renata Ellison goes  
10 and buys a gun. She indicates that she's going to be the owner  
11 of that gun. After she purchases it, she gives it to Quentin  
12 Fishburne, and he accepts it. Quentin Fishburne and Renata  
13 Ellison have conspired to knowingly make a false statement in  
14 the purchase of a firearm.

15 So what evidence did we present to you yesterday  
16 that tends to prove this conspiracy?

17 First, the fact that Renata Ellison has a  
18 pattern of buying firearms and then those firearms ending up  
19 being possessed and used by men she's in a romantic  
20 relationship with.

21 The fact that Renata Ellison and Quentin  
22 Fishburne have been in a romantic relationship since 2013.

23 The fact that Renata Ellison told Agent Callahan  
24 she knew that Quentin Fishburne was a felon.

25 The fact that Renata Ellison purchased the

1 Jimenez 9 millimeter on March 8th, 2014 -- 2013 and signed the  
2 form that it was for her.

3 The fact that Quentin Fishburne was found in  
4 possession of the Jimenez 9 millimeter on May 2nd, 2014.

5 The fact that four months after Quentin  
6 Fishburne was caught with the Jimenez, Renata Ellison buys the  
7 Smith & Wesson .40 caliber firearm and signs the form that it  
8 was for her.

9 The fact that a little over three months later,  
10 Renata Ellison goes back to the Sheriff's Office to claim the  
11 Jimenez 9 millimeter.

12 The fact that the Smith & Wesson .40 caliber was  
13 used in the November 2013 shooting that Quentin Fishburne was  
14 convicted of a crime in connection with.

15 The fact that Quentin Fishburne was found in  
16 possession of that Smith & Wesson .40 caliber on March 18th --  
17 on March 31st, 2018.

18 The fact that after Quentin Fishburne was  
19 arrested for the possession of that Smith & Wesson, Renata  
20 Ellison followed her pattern of going back to claim the firearm  
21 and wrote a letter that was presented to a magistrate judge  
22 during Quentin Fishburne's bond hearing.

23 The fact that we know that the contents of that  
24 letter were not true, because when confronted with the pattern  
25 of her guns that she purchased being found in possession of



1 other people, she told Agent Callahan -- she asked if she could  
2 recant her statement, that she wanted to tell the truth, and  
3 that she didn't want to get in trouble for something Quentin  
4 did. She was not bullied. She was not coerced. She was not  
5 threatened by Agent Callahan. She was presented with the  
6 facts, and she realized that she was caught in her lie.

7 Ladies and gentlemen, when you take all these  
8 things together and you look at it, it clearly shows that  
9 Renata Ellison with Quentin Fishburne's permission, consent,  
10 and agreement was buying firearms to him -- buying firearms for  
11 him despite putting in the purchase paperwork that they were  
12 for her.

13 I want to ask you what all these things I'm  
14 about to say have in common? Quentin Fishburne's girlfriend.  
15 Quentin Fishburne's wife's car. The Jimenez 9 millimeter  
16 purchased by Quentin Fishburne's girlfriend. Quentin  
17 Fishburne's mother's car. The Smith & Wesson purchased by  
18 Quentin Fishburne's girlfriend. Shell casings matching that  
19 Smith & Wesson at a 2015 shooting that Quentin Fishburne was  
20 convicted of a crime in connection with. What is the common  
21 denominator? Quentin Fishburne.

22 We do not get here without Quentin John  
23 Fishburne.

24 Three crimes scenes, two guns, one purchaser,  
25 and I submit a new one. One common denominator, Quentin

1 Fishburne. We're asking you to return a verdict of guilty as  
2 to all three counts. Thank you.

3 THE COURT: Thank you, Ms. Henderson. Mr. Shahid?

4 MR. SHAHID: Good morning.

5 THE JURY: Good morning.

6 MR. SHAHID: I want to thank you again for your  
7 service as jurors in this case. This is a very important case  
8 for the Government. It's also important because the most  
9 important person in this courtroom today is Mr. Fishburne,  
10 nobody else.

11 After I give you my closing summation or my  
12 closing argument, I'm going to sit down. I will not have an  
13 opportunity to come back out to talk to you. There may be  
14 something that I wish I could come back out and jump up and say  
15 to you or something that I could offer back in reply. The  
16 Government gets the last word in all of this, so I'm not going  
17 to be able to cover every point of law or every point of fact  
18 that I want to talk to you about, but this is a summation of  
19 what we heard from yesterday's evidence and witnesses who  
20 testified yesterday.

21 The Court is going to give you instructions  
22 about two very important elements of the law that apply to  
23 Quentin Fishburne, reasonable doubt and presumption of  
24 innocence. The Judge will go into those details much better  
25 than I can explain that to you, but your verdict must be

1 unanimous. That means each and every one of you sitting in  
2 this box have got to be in agreement.

3 And the verdict is very simple. Is he guilty or  
4 not guilty of Count 1, Count 5, and Count 2?

5 And it has to be all of y'all in agreement with  
6 that, but that verdict must strip from Mr. Fishburne the  
7 presumption of innocence, and that burden must be beyond a  
8 reasonable doubt. That's not something small or something  
9 callous. It is a tough burden.

10 Now, this case comes down to very simply one or  
11 two new elements. Possession. Knowingly possessed.

12 I asked you yesterday to pay close attention to  
13 the Indictment. Now, you won't have the Indictment back in the  
14 courtroom -- back in your jury deliberation room, and the Judge  
15 will read it in his instructions to you, but the Indictment  
16 states specific dates on which Mr. Fishburne is alleged to have  
17 possessed these two different firearms we've been talking about  
18 for the past 24 hours or so.

19 Possession can be shown by different factors. I  
20 possess in my hand right now my glasses. You can see that. I  
21 possess it. I possess right now my car. I have the keys to my  
22 car. I possess it. The Government's correct. Title to  
23 something does not equate to possession, but title is  
24 possession, but you can prove possession by other means, and  
25 you have to prove possession on that particular date that's

1 stated in the Indictment, and you have to prove possession  
2 beyond a reasonable doubt. Not by suspicion, not by going  
3 around your elbow to prove something, but by sufficient,  
4 credible evidence, and it must be complete.

5 Now, we made the case very simple for the  
6 Government. We've agreed and stipulated to three of the four  
7 elements. That's 75 percent of their case. We gave them 75  
8 percent of the case. We're being direct with you, upfront with  
9 you and forthright with you about the three of the four  
10 elements. But you can't have this -- like horseshoes, you get  
11 be close to the pin. You can't be close, and that's it.  
12 You've got to get that horseshoe all the way around the ring to  
13 find him guilty beyond a reasonable doubt.

14 we talked about yesterday some number the  
15 Government threw at you. Let me give you some more numbers to  
16 be thinking about to help you understand reasonable doubt.  
17 Six, four, zero. Six years, four law enforcement agencies,  
18 zero fingerprints.

19 From May of 2014 until today -- until yesterday  
20 when you heard the evidence, the Government had almost six  
21 years of an opportunity to prove possession. Six full years  
22 from that time of the stop in May of 2014 until yesterday, they  
23 had six years to try to establish possession of these two guns.

24 There were four law enforcement agencies working  
25 together in concert to prove that: The Colleton County

1 Sheriff's Office, the Walterboro Police Department, SLED, and  
2 ATF. Local, state and national governments had the opportunity  
3 over six years, and how many fingerprints did they come up  
4 with? Zero. Fingerprints prove possession on that particular  
5 day. Let's not run over that date and think, "Oh, that's not a  
6 big deal." It's one of the biggest deals. On the day that he  
7 is stopped in the car, did he possess the firearm? Did he  
8 possess it? It's very simple. This is not complicated. It's  
9 very simple. Six, four, zero.

10 Seven, 15, zero. Seven witnesses called on the  
11 witness stand by the Government yesterday. 15 exhibits you've  
12 got in front of you. Zero fingerprints. You had three  
13 officers from the Colleton County Sheriff's Office, Langenfeld,  
14 Riney and Davis. You had two from the Walterboro Police  
15 Department, Cook and Duboise. You had Agent Callahan and  
16 Mr. Smith. Seven witnesses. Zero evidence of fingerprints.  
17 15 exhibits. 15 exhibits. Zero proof of fingerprints.

18 How do you prove possession on that particular  
19 day, ladies and gentlemen? How do you prove that somebody  
20 possessed something on the day that's in question? Not three  
21 years ago, not four years ago, not 10 months ago, but on the  
22 day that the car was stopped. Zero. Six, four, zero. Seven,  
23 15, zero. Zero equals reasonable doubt. Reasonable doubt  
24 equals not guilty.

25 It's just that simple. It really is just that

1 simple. This is not complicated.

2 Nine, zero. Nine pieces of evidence up here in  
3 which they could have taken the time to dust for fingerprints.  
4 The gun. Zero fingerprints tested. This clip or magazine,  
5 zero dusting for fingerprints. The ammunition that came out,  
6 zero. Zero. The Jimenez 9 millimeter, where is it? It has  
7 the same gun, the same clip, the same bullets in that. Zero.

8 These three shell casings, they did a bunch of  
9 tests on this. That came about 2015. Zero fingerprints.  
10 Didn't even try fingerprints, not even made an attempt, and you  
11 remember when I approached Mr. Smith, the SLED fellow who  
12 testified, I asked him to demonstrate when they were talking  
13 about this gun about how the mechanics of it worked, and he was  
14 showing us. You remember? He was holding the gun. He grabbed  
15 the magazine. What am I doing? My hands on it. My fingers  
16 are on it, on these items. Multiply that by two. Two guns and  
17 two clips. Multiply that by the number of ammunition because  
18 you have to take the ammunition and stick it in here.

19 I'm not being cute or funny or trying to deceive  
20 you. I'm just giving you facts, simple facts, because the  
21 whole case comes down to knowingly possessed on the date of the  
22 Indictment, not at some particular point other than that. He's  
23 not charged with how did he get at some other point in time.  
24 It's what's on the Indictment.

25 May of 2014, March of 2018. And how do you

1 prove that? And fingerprints are really simple evidence. At  
2 least make the opportunity to try, because you know what  
3 happens when you test something? You provide information to  
4 help you make a decision.

5 Think about the fairness of this. Think about  
6 the fairness of this. What if they did dust for fingerprints  
7 on any of these nine items? Over the six-year course of this  
8 investigation, over the four agencies involved, over the seven  
9 witnesses they had, what if they had dusted for fingerprints  
10 and it came back positive? It would probably be a whole lot  
11 easier; wouldn't it? We may not even be standing here.

12 But much more importantly, ladies and gentlemen,  
13 and utmost fairness to somebody, to a citizen of our community  
14 to a citizen of this state or a citizen of this nation, the  
15 utmost fairness is what if they dusted for fingerprints, and it  
16 came back negative? They neglected to give Mr. Fishburne a  
17 fair opportunity. That's reasonable doubt. That's reasonable  
18 doubt. They deprived him of the opportunity to prove his  
19 innocence. That's reasonable doubt.

20 Six years, four agencies, seven witnesses, 15  
21 pieces of evidence, they failed him. I mentioned to you  
22 yesterday about windows in this courtroom to let light in.  
23 You're the light. You're the light.

24 Let's go to a little bit about the facts of the  
25 case, talking about the police officers who testified. First

1 officer was a deputy who now works up in Wake County, North  
2 Carolina. He came up, and he testified about this high speed  
3 chase. Now, you'll have the video if you want to look at the  
4 video. It's raining. You see rain on the windshield.

5 He's got a camera fixed on his car, so whatever  
6 way the car is traveling that camera was pointed. Now, you  
7 heard his -- he's on the radio. He's talking to dispatch.  
8 He's driving the car at a high rate of speed and talking to  
9 other officers and dispatch on what's going on. Now, you look  
10 at that tape. You look at that video. Tell me -- tell  
11 yourselves anywhere, anywhere in that video did you see  
12 movement in the car that he was chasing? Anywhere? Can you  
13 see something happening inside that car? The reason we have  
14 video recordings, folks, is to verify. You can't verify  
15 something that you can't see. There's no video at all, no  
16 depiction whatsoever in that video that shows movement in the  
17 car.

18 Let's talk about finding the guns.

19 The testimony was from Officer Davis, I think  
20 who it was -- or Riney, I apologize. Riney. He's the one who  
21 actually recovered the guns. We can't see that happening  
22 because another truck comes in and is blocking the officer's  
23 in-car dash camera from where the other car was stopped. So we  
24 can't see what is going on with that because the truck comes in  
25 and blocks the view.



1 But there's Officer Riney who testified about  
2 recovering the guns. He said this. This is very important.  
3 This goes to possession. Where were the guns located? Two  
4 guns, passenger's side, not the driver's side, and who's the  
5 driver? Mr. Fishburne. Possession on the passenger's side.  
6 And this is something very interesting that he said as well.  
7 Partially underneath the seat I think is what he said, words to  
8 that effect. Not fully out on the floorboard, but partially  
9 hidden.

10 Now, is that -- if what happened took place the  
11 way he described it, wouldn't one gun be on the driver's side  
12 and one gun be on the passenger's side, right on the floorboard  
13 clearly visible? Possession. Reasonable doubt.

14 What happened to that gun? It was in their  
15 possession for four months. The rightful owner came and got  
16 it. She signed for it, produced her driver's license on this  
17 thing, and said, "I want my gun back." "I want my gun back."  
18 They gave it to her. Possession.

19 Let's go to March 2018. You had two people  
20 testify about that. By the way, before I leave that point,  
21 Officer Davis was the one who testified about giving that gun  
22 back. You know what his job was? Supervising. Supervising  
23 sergeant. He's a supervisor. Did it ever occur to him at any  
24 point in time to say to those guys, "Complete your  
25 investigation. We've got the gun. We had it from May through

1 December. You know, perhaps we need to look at the gun and  
2 check about who it really belongs to, whether or not  
3 Mr. Fishburne really possessed a gun on the date in question."  
4 They did no follow-up investigation. Got rid of the gun  
5 within -- from May to December, the gun was returned back.

6 Officer Cook and Officer Duboise testified about  
7 the March 2018 checkpoint. This is pretty curious. You don't  
8 know a whole lot about where this checkpoint took place. You  
9 know it was in Walterboro. They described Hiers Corner and  
10 Center Street, but you don't know a whole lot about it. They  
11 said, "We're going to do a checkpoint because we're looking for  
12 a fleeing felon?" No. "We're looking for illegal aliens south  
13 of the border?" No. "We're just going to do a broad  
14 checkpoint because we're just checking people's driver's  
15 license, and registration, and insurance cards?" No. "We're  
16 checking at a checkpoint for speeders."

17 How do you catch speeders? How do police  
18 officers catch speeders? Pretty simple. They have a little  
19 device in that car called a radar. They sit on the side of the  
20 road, and they watch the cars go by, and if they're speeding  
21 beyond the speed limit by that school, they turn their blue  
22 lights on, and they stop them. It's a great deterrent, by the  
23 way, because as other cars are going by, they see the blue  
24 light going on, and they quit speeding. It takes one officer,  
25 not three or four.

1 Folks, use your common sense on this. What's  
2 really going on with all of this? What's really going on with  
3 that checkpoint honestly? I mean, come on. No one told you to  
4 check your common sense at the front door when you walked into  
5 this courtroom. Common sense tells you they really weren't up  
6 there to catch speeders. They'd have radar up there and a  
7 couple of police officers. They do it all the time. You know  
8 that they do it all the time.

9 Now, it's really interesting about Sergeant  
10 Cook. I'm going to play for you his video recordings in a  
11 second. He's a supervising officer on the scene. Guess what  
12 he has on? A body camera so we can record and see for our own  
13 eyes what's taking place out there. What else does he have  
14 going on? He has an in-car dash cam to see what was going on.  
15 Guess what Officer Duboise has? He's got a body-worn camera  
16 just like Sergeant Cook does. Is it working? No. Does he  
17 bother to check to see if the red light is on? No.

18 Now, just think about this for a second. You  
19 want to be fair? Let's be fair. Be fair to Mr. Fishburne.  
20 The camera records audio and visual activity, so what is said  
21 between the officer and the cars that he stopped can be picked  
22 up. If he can turn it on and off -- he has to hit a red button  
23 to turn it on and off to save the battery, but every time he  
24 has an encounter with the public, which is part of their  
25 policy, he's supposed to turn that sucker on, and all he has to

1 do is look at the red light and see if that sucker is on. Very  
2 simple. One, two, three. He can record exactly what takes  
3 place. I mean, credibility is critical in this case. This is  
4 critical in this case.

5 I want you to observe Officer Duboise's  
6 testimony, how he was sitting in that stand, smacking gum.  
7 well, that shows a lot of respect for you guys; doesn't it?

8 I'm going to step back. I asked about the  
9 policy, particularly the checkpoint. "They don't apply to me."  
10 Excuse me. I'm sorry, Officer. I thought you were an officer  
11 with the Walterboro Police Department and had a policy about  
12 how to do checkpoints. "That doesn't -- they don't apply to  
13 me." I'm smacking gum. Callous attitude. Callous attitude  
14 towards you, callous attitude towards Walterboro Police  
15 Department. Body-worn cameras are to protect him and to  
16 protect the people he comes in contact with. That's just basic  
17 fairness.

18 Let's go through the encounter he has with  
19 Mr. Fishburne. He says that he had encountered about 50 or so  
20 people before that day. He's not wearing gloves, and he says  
21 Mr. Fishburne was reluctant to roll down the window, and he  
22 could smell marijuana, all right? Now, if he had his body  
23 camera on, we would know what really happened, but what the  
24 hay? We don't. Then he says he smells marijuana. Tells him  
25 to pull to the side of the road. Now, this is very

1 interesting, what happens after that.

2 He pulls off to the side of the road, and he gets  
3 Mr. Fishburne out of the car and pats him down. I asked him  
4 specifically, "You patted him down, but you didn't arrest him  
5 then?" He goes to the back of the car, and I said, "When you  
6 went looking in the car, did you find anything that would, you  
7 know, substantiate the smell of marijuana inside the car?"  
8 There might be some burnt blunt. You know, a little reefer,  
9 the little weed they smoke. Maybe that would be, like, in the  
10 ashtray. Maybe it fell on the floor where he was sitting. No.  
11 I don't need to worry about that kind of stuff.

12 So he can't find anything in the car that would  
13 substantiate the smell of marijuana. Isn't that interesting?  
14 He cannot find anything in the car to substantiate the smell of  
15 marijuana, and the only reason, folks, the only reason he pulls  
16 that car over is he smells marijuana. Oh, but he smelt it on  
17 him when he had him in jail, right, because you saw on the  
18 video -- I'll play it for you in two seconds. You saw him pat  
19 him down, and here we are person-to-person,  
20 physical-to-physical, I'm patting him down, and clearly he  
21 smelled it then, right? No, because the back of the car. He  
22 didn't smell it on his person, and there's zero, zero evidence  
23 that there's something inside the car to lend him the  
24 credibility that he smelled marijuana. Reasonable doubt.  
25 Reasonable doubt.

1 Also pay attention to this. They encountered about  
2 50 people, I think is what the testimony was. They stopped, I  
3 think, maybe three or four people. One person was for  
4 something dealing with some marijuana charges, and I think  
5 officer Cook testified they had that person pull off to the  
6 side of the road. They went through the process of checking  
7 out the car and checking out that driver. That driver was  
8 given a citation and left.

9 They didn't stop the checkpoint then; did they?  
10 Oh, but guess when they stopped the checkpoint? When they  
11 arrested Mr. Fishburne. Something is definitely funny about  
12 this, folks. Something is really funny about this. That's  
13 called reasonable doubt, by the way. The reason for the  
14 checkpoint is speeding, and they just so happened to stop the  
15 checkpoint after the arrest of Mr. Fishburne, but a person  
16 who's in similar circumstances when they pull off the side of  
17 the road and do a search of that car, they don't stop the  
18 checkpoint then.

19 Do you see the inconsistencies with their  
20 stories here? Do you see the reasonable doubt that we're  
21 taking about here? The Defendant has given the Government 75  
22 percent of their case. All they have to do is finish the 25  
23 percent, and they can't do it, because they didn't do their job  
24 after six years of investigation, four agencies, 15 pieces of  
25 evidence, seven witnesses. It's simple to prove possession,

1 folks. Come on. It's not that complicated.

2 Did they bring in a witness at any point to say,  
3 "I saw Mr. Fishburne with that gun an hour beforehand," or a  
4 day beforehand or a week beforehand or a month beforehand or a  
5 year beforehand? No. They tried to bring in this case of  
6 2015. Just read the stipulation on that. You'll have it back  
7 with you in the room. If I can find it. Here it is. This is  
8 stipulation. Pay very close attention to this stipulation  
9 dealing with 2015. This is the only connection that they try  
10 to come up with about possession.

11 There was a shooting, a shooting, in Colleton  
12 County on November the 6th, 2015. When was this gun found?  
13 March of 2018, not quite three years, two years and several  
14 months, okay? That's how far back they had to go. Involving  
15 members or associates of a criminal street gang known as the  
16 Cowboys in which at least three different firearms were used:  
17 A .380, a .40, and .45 caliber shell casings were recovered  
18 from the scene. The three .40 caliber shell casings recovered  
19 are Exhibits 11, 12, and 13 in this case.

20 Quentin Fishburne was convicted of a crime in  
21 connection, in connection with this shooting, not the shooting.  
22 I'm just reading what we agreed on. Quentin Fishburne was  
23 convicted of a crime in connection with the shooting, but not  
24 the shooting. He admitted. He's being very forthright with  
25 you, folks. He's come to tell you what he's guilty of doing.

1 He admitted that he was an associate of the Cowboys, that he  
2 was present at the scene, and that he drove another associate  
3 of the Cowboys away from the scene after the shooting, and  
4 guess what? Authorities were not able to determine whether or  
5 not Mr. Fishburne had fired any of these shots on November 6th  
6 of 2015.

7 So these three shell casings -- which they don't  
8 have the fingerprints on because they didn't even bother to  
9 test anything -- found two and a half plus years later at a  
10 shooting in which they don't even know who the shooter was.  
11 Somehow, somehow that proves that Mr. Fishburne possessed this  
12 gun in March of 2018.

13 Now, if you said, "I was the shooter, I shot this gun  
14 back in November of 2015," okay. Maybe he's got possession  
15 back then, but we don't even have facts or evidence or proof of  
16 any sort that he possessed a gun back in 2015, just that these  
17 shell casings were found at a shooting in which he's not the  
18 shooter. There's no evidence about him being the shooter.

19 Reasonable doubt. Reasonable doubt.

20 Let's talk about conspiracy. Conspiracy has this  
21 stigma about it. It takes two or three -- two people plus to  
22 be involved in a conspiracy, and they got to have some sort of  
23 meeting of the minds in this conspiracy. They've got to agree  
24 on doing something together that's illegal. That's what  
25 conspiracy means. The Judge is going to instruct you. It's



1 like a partnership of sorts, like a business partnership, I  
2 guess, and the two people who have got to be involved in it  
3 have got to agree on doing something to carry out an illegal  
4 act.

5 The illegal act that they're alleging at this  
6 time is making false statements to a federal licensed firearm  
7 dealer. Okay? So in order to do that, you've got to do  
8 something to further the conspiracy. So if one person does  
9 something, at least one other person has got to do something to  
10 further it, to advance it to make the conspiracy successful, to  
11 carry out the conspiracy.

12 Have you heard one bit of evidence whatsoever  
13 that Quentin Fishburne did something to help lie on the form?  
14 Was he present when Ms. Ellison went there to fill out the  
15 form? You have no evidence on that whatsoever. Was he in a  
16 car outside with the engine running, waiting for her to go in  
17 and buy the gun and come back out? Did he give her a dollar  
18 bill to go do that, or a \$100 bill, or \$5,000 to go buy the gun  
19 for him? We don't know. There was zero evidence, because I  
20 asked, "what follow-up investigation did you do to talk to the  
21 dealers about this so we can find out about Mr. Fishburne's  
22 involvement?"

23 Now, this is also something very curious about  
24 these forms, and you go back and examine them. It has her name  
25 on here, her name. We've blacked out her street address for

1 her privacy, but it has her street address on there and the  
2 city that she lives in. It has her height and weight, so you  
3 can have a physical description of her. It has her date of  
4 birth, and a part of that is blacked out, 1979. She has to  
5 show identification, a driver's license. She put down the  
6 driver's license on here, and if you check the driver's license  
7 number and this driver's license number, it's the same. And  
8 her date of birth, it's kind of hard to read, but it's the same  
9 year.

10 So, boy, these were pretty good crooks; aren't  
11 they? They're hiding their identity; aren't they? They're  
12 trying to lie and deceive somebody; aren't they? I'm giving  
13 you my name, my date of birth, my physical description, my  
14 driver's license, my driver's license's number, to show you  
15 that I'm an actual driver.

16 Now, I asked the agent about street purchases.  
17 So you have this form filled out to ensure that the person  
18 who's buying the gun is legitimate and then they're actually  
19 the person buying the gun, so that if Agent Callahan or some  
20 other law enforcement officer wants to go out and check on a  
21 time and find out who brought the gun, you've got some  
22 information about it. You got the person who bought the gun,  
23 where the gun was purchased, the date the gun was purchased,  
24 the person's address, the person's physical description, the  
25 person's date of birth, the person's social security -- I mean,

1 the driver's license number.

2 That's not an attempt to deceive. I'm telling  
3 you what's going on. Now, if you want to go out and be engaged  
4 in this transaction of getting guns illegally, why go through  
5 all the bother and purpose of doing that? why -- literally,  
6 what you're doing is you're putting a big old red target on  
7 your back in neon saying, "Here I am. Come and get me. I'm  
8 easy to find. I live in walterboro. Here I am. You want to  
9 find out who bought the gun? I'm here. I'm telling you who it  
10 is. It's me."

11 And not one shred of evidence. Absolutely zero  
12 shred of evidence that he was even near or had any involvement  
13 in the purchase of that gun, and you've got to find beyond a  
14 reasonable doubt he had something to do in participating and  
15 making this statement on these forms untruthfully. If you  
16 can't, then he's not guilty. If you can't make that  
17 connection, then he's not guilty of the conspiracy. It's just  
18 really that simple. The lack of evidence is telling. The lack  
19 of evidence is telling. Mr. Fishburne has zero obligation,  
20 zero obligation to produce one piece of evidence in this case.

21 But you do have a joint exhibit or a Court  
22 Exhibit that exonerates him. "On Saturday, March 31st,  
23 2018" -- does that date sound familiar? "Quentin Fishburne and  
24 I, Renata Ellison, were riding together just prior to his  
25 arrest. Quentin picked me up from 103 Mincey Street." That's

1 pretty detailed information; isn't it?

2 "Quentin exited the car and walked around to the  
3 passenger side. I proceeded to the driver's seat of the  
4 Camaro. Once into the car, I placed my firearm" -- my  
5 firearm -- "under the driver's seat. Hence, we were supposed  
6 to have lunch at Golden Corral. However, he received a call  
7 from another female. This prompted an argument between he and  
8 I. As a result, I drove back to Mincey Street. Still upset  
9 about the phone call, I got out the (verbatim) and Quentin  
10 left." Left out a word there.

11 "Subsequently, I left my firearm under the  
12 driver's seat. Quentin was unaware that my firearm was in the  
13 car." "Quentin was unaware that my firearm was in the car."  
14 knowingly possession, negated in that one statement.

15 "As follows, I contacted Officer Duboise the  
16 next day to retrieve my firearm but was unsuccessful. I  
17 explained to Officer Duboise that Quentin was unaware" -- but  
18 he don't care -- "that the firearm was in my car.  
19 Officer Duboise said that Quentin would have to plead guilty  
20 before I would get my firearm." Notarized.

21 Now, this, alone, negates a conviction,  
22 particularly on March 31st, 2018. She's telling you by this  
23 statement he ain't guilty. He doesn't know the gun was under  
24 the car seat. Then go back to Officer Duboise's examination of  
25 the car. You see him in the car with his hand stuck in there

1 rummaging around for a few seconds until he's found something  
2 hiding under the seat; not on the floorboard, not in plain  
3 view, but we can't have this, folks. Oh, goodness gracious,  
4 no.

5 Agent Callahan goes to see her, because this is  
6 devastating to the Government. This kills their case, and he  
7 confronts her with some information that she may not know that  
8 he has, and she gets concerned. Like, "Uh-oh, I may be in  
9 trouble with what you're telling me. I want to back off. I  
10 want to recant my story. I want to get me a lawyer, because I  
11 don't want to get in any more trouble with what you're telling  
12 me," and guess what happened to her? Her instincts were right.  
13 She got indicted. She got indicted as his co-defendant,  
14 co-conspirator. Yeah, she's dadgum scared, because the federal  
15 government is about to drop a load of bricks on her head, and  
16 she better do something fast to protect herself, but it was a  
17 little too late. She got indicted, and she got scared, and she  
18 got annoyed.

19 For some reason now, folks, we're supposed to  
20 just tear this thing up and ignore it completely, because she  
21 got scared, and her instincts were right. She got indicted.  
22 So should we just ignore this completely and throw it away as  
23 nothing? I mean, we -- what she saying was a mistake?

24 You don't have to believe it, but it provides  
25 you at the very minimum with reasonable doubt. Let's just

1 1 2 : 0 2 P M leave it at that.

2 I'm sure there's some other things I need to say  
3 to you. I'm going to apologize if I don't cover all my tracks.  
4 I think I've said enough. Your verdict must be unanimous. All  
5 of y'all have to agree. Your verdict has to be fair. It has  
6 to be based not on what I say or what the Government lawyers  
7 say. It has to be based on the evidence, but it has to be  
8 truthful.

9 Even if you think he may be guilty, even if you  
10 think he's probably guilty, even if you think that there's --  
11 some funny thing is going on with this, even if you think,  
12 "well, you know, he's got these prior records. You know, he  
13 should be guilty of something," that don't cut it. That's not  
14 the standard. The standard is very simple: whether or not the  
15 Government has proved to you each and every one of the elements  
16 of all three counts beyond a reasonable doubt; whether or not  
17 he participated in knowingly, willfully in the conspiracy to  
18 lie on federal forms when the gun was purchased; whether he  
19 knowingly had actual knowledge that the guns were actually in  
20 the car that did not belong to him, not titled in his name, and  
21 not titled to -- the gun's not titled in his name.

22 Evidence that I've gone over with you, you've  
23 got to establish each and every one of those elements beyond a  
24 reasonable doubt. They can't -- they haven't done it. Your  
25 verdict must be not guilty.

1 Thank you for your time. Thank you for your  
2 patience.

3 THE COURT: Mr. Schoen?

4 MR. SCHOEN: Good morning, ladies and gentlemen.  
5 Mr. Shahid has spent a lot of his time focusing on what  
6 evidence is not in this case and not a lot of time talking  
7 about what evidence is in this case, and what I want to do is  
8 to address some of the things he said about evidence that  
9 wasn't here, and then to remind you of the evidence that is  
10 here.

11 So let's start with some of the evidence, some  
12 of the objections he's raising, some of the evidence he says is  
13 not here. Start with his favorite, fingerprints, fingerprints,  
14 fingerprints. He's got this six, four, zero thing. I got  
15 three numbers for you, too. 11, dozens, zero. I asked Special  
16 Agent Callahan, who's been an ATF Special Agent for 11 years,  
17 "How many guns have you submitted for fingerprinting?" And he  
18 told you the answer was dozens, and I asked him how many  
19 fingerprints. "How many fingerprints have you ever gotten off  
20 of any of those guns?" Zero. Zero.

21 The argument that we deprived Mr. Fishburne of  
22 exonerating evidence because, "Hey, you know, if there weren't  
23 any fingerprints on that gun, then obviously he couldn't be  
24 guilty," is ridiculous. Dozens of guns he submitted, never  
25 gotten fingerprints off of those guns. And then ask yourself,

1 "What's the purpose of finding fingerprints on something?" The  
2 purpose is to show that somebody's hand touched it.

3 Look at the 2014 stop. You've got something  
4 better than fingerprints. You've got an officer on the stand,  
5 no reason to lie, just doing his job, driving down the street,  
6 trying to stop cars running from him, and he's saying, "Listen,  
7 I saw two guys waving guns at me. I backed my vehicle off  
8 because they were waving at guns at me." And his question,  
9 "Are you sure it was a gun?" I loved his answer. "It  
10 certainly wasn't a Bible." "It certainly wasn't a Bible."

11 And he radios out to the other officers,  
12 "They've got something in their hands." Why is he doing that?  
13 Because he thinks what they got in their hands is a gun. You  
14 saw that officer, big strong guy, calm on the stand. You heard  
15 him when he was in those woods, yelling, screaming, "Let me see  
16 your hands." "I will f-ing kill you." He was terrified, and  
17 he was scared because he had seen guns, and then, of course,  
18 what's found on the floorboard? Two guns.

19 Mr. Shahid wants to make a big deal out of the  
20 fact that the two guns were found on the right side of the  
21 console as opposed to the left side of the console. If I was  
22 there, maybe I would throw it on the right side, too. It  
23 doesn't prove -- it doesn't prove anything, the fact that  
24 there's two guns right on that passenger's side versus on the  
25 driver's side.



1 The purpose of fingerprints is to show that a  
2 person's hands have touched something. The Judge is going to  
3 give you a very specific instruction, and listen to this  
4 instruction. He's going to say, the Government is not  
5 obligated, the Government is not obligated to use any  
6 particular technique to investigate a case. What you have to  
7 do is to evaluate the evidence that we have brought you and  
8 say, "Is that evidence enough?" And when you looked at that  
9 2014 case, we've not just brought you strong circumstantial  
10 evidence, we've brought you direct evidence. Officer says,  
11 "Look, I saw these guys with guns."

12 Two guns are found, and where does that gun come  
13 from? That gun was purchased by Mr. Fishburne's girlfriend.  
14 They're driving Mr. Fishburne's wife's car. How do you  
15 possibly explain that one? "Honey, I'm going to need you to  
16 stop letting my girlfriend put her gun in your car," said no  
17 one ever. There's no explanation for it, other than  
18 Mr. Fishburne knew that that gun was in there, and he knows  
19 that those two guns are in there, and his passenger knows that  
20 they're in there. That's joint possession. It's very simple.

21 And then they point out, well, there's no  
22 fingerprints from the 2018 stop, make a big deal out of the  
23 fact that that gun wasn't fingerprinted. But you know what we  
24 brought you? We brought you something very, very similar to  
25 fingerprints. Ballistic fingerprints; that is, you heard from

1 Special Agent Callahan about the three shell casings that were  
2 recovered from that shooting and how he submitted these shell  
3 casings and how Chad Smith, the examiner who's done thousands  
4 of these examinations with SLED, looked at this gun and looked  
5 at these shell casings and determined that this gun fired these  
6 three shell casings.

7 Of course, that wouldn't be a big deal if this  
8 was just some random shooting, but it's not some random  
9 shooting. You have this stipulation that the Defendant entered  
10 into. See if I can find this. Right here, where he says --  
11 Quentin Fishburne was convicted of a crime in connection with  
12 the shooting. How much of a coincidence is that? The same gun  
13 that's found under his seat is tied back to a crime where he's  
14 pled guilty to an offense in connection with it? He doesn't  
15 just admit that he's there. He ad -- he pleads guilty to a  
16 crime in connection with this particular shooting.

17 Mr. Shahid makes a big deal out of the fact, you  
18 know, authorities were not able to determine whether or not  
19 Mr. Fishburne fired any of the shots on November 6th of 2015.  
20 That's true. But guess what they didn't have? They didn't  
21 have Mr. Fishburne driving around with this under his seat.  
22 They didn't have a match between this gun and these shell  
23 casings. You do. We don't have to prove that Mr. Fishburne  
24 was involved in that shooting. We don't have to prove that he  
25 possessed that gun on that night, but it is an incredible,

1 incredible coincidence, stacking up on one after another  
2 incredible coincidence, that the same gun is that he's found  
3 with in 2018 just happens to match a shell casing from a 2015  
4 shooting where he's present.

5 Mr. Shahid argues that if you can't see movement  
6 in a vehicle, there must be reasonable doubt. You can't see  
7 what's going on in that vehicle, so therefore the officer  
8 couldn't see what was going on in that vehicle. You can't see  
9 hardly anything out of that video. It's not of particularly  
10 high quality. There's rain all over the windshield. I  
11 certainly hope that that officer can see more than you can see  
12 in that video, because otherwise he shouldn't be driving,  
13 because you really can't see what's going on.

14 You have no reason not to believe the officer's  
15 testimony that he saw two people driving with those guns in  
16 their hands. That's strong evidence. You can convict him --  
17 if we brought him in and tried him on that just that, you could  
18 convict him on the testimony of that officer saying, "Hey, I  
19 saw these two guys, and both of them had guns in their hands,"  
20 especially when you can then trace that firearm right back to  
21 someone who's in an intimate relationship. The evidence in the  
22 2014 situation, way, way beyond reasonable doubt.

23 Then you've got the 2018 situation. Remember  
24 what happens there. He pulls up to a checkpoint. Mr. Shahid  
25 wants to go on and on about where the checkpoint is located and

1 tell them how to do their job with the body cameras and go  
2 after them for failing to write the report in this particular  
3 order. who cares? who cares? what's the purpose of a body  
4 camera? So that you can see what's going on, and when you  
5 watch that video, if you watch the dash cam from Officer Cook's  
6 car, you'll see Officer Duboise come out. He's got a gun in  
7 his hand. He was standing right there. You have two officers  
8 searching this car at the same time. There's like a suggestion  
9 that they're doing something improper? There's been no  
10 evidence of that. So what if he's chewing gum? who cares?

11 Evidence on that 2018 shooting is strong in and  
12 of itself. That evidence is entitled to substantial weight,  
13 because, again, what a coincidence. It just so happens that  
14 that gun was purchased by his girlfriend, the same person who  
15 purchased the other gun. Powerful, powerful evidence  
16 overcoming reasonable doubt showing that he was in possession  
17 of that gun. He knew that gun was there. How do you know he  
18 knew it was there? The first thing he says to the officer when  
19 he rolls up is, "Anything you find in this car isn't mine."  
20 He's demonstrating that he knows he's got something in that car  
21 he's not supposed to have.

22 Then they go after him -- they go after the  
23 cops, saying, "well, you know, there's no way they could have  
24 smelled marijuana. They didn't find marijuana ashes." what  
25 did you hear? Quentin Fishburne has marijuana in his crotch.

1 Of course the officer could smell marijuana. The marijuana is  
2 on Quentin Fishburne, and Quentin Fishburne is sitting in the  
3 car.

4 He's alone. The car belongs to his mom. That  
5 gun belongs to his girlfriend. Again, explain that connection.  
6 How in the world does that gun get into that car without  
7 Quentin Fishburne knowing it? It defies logic.

8 Then there's that conspiracy count, and the  
9 question is how do you know when Mr. Fishburne joined in the  
10 conspiracy? Let's be clear what the conspiracy is. It's a big  
11 scary-sounding word. Essentially, it's an agreement by two  
12 people to violate the law and act in furtherance of that  
13 agreement, and what we've got here -- the most powerful  
14 evidence of the conspiracy is a pattern, and it is a pattern  
15 that repeats itself.

16 First we need to be able to show that Renata  
17 Ellison is involved in straw purchasing, that she's going in  
18 and she's buying guns that are not for her, that they're for  
19 somebody else. She's lying on this form, and you've got these  
20 forms. It's Exhibit 10, I believe. You'll get it back. The  
21 form basically -- you have to say, "I'm the actual buyer of the  
22 firearm," and she checks "yes" every single time on these  
23 forms. But if the goal of buying guns is to make sure that  
24 somebody else gets caught with them by the police, she is  
25 batting a thousand. She is three for three.

1                   You heard about first gun she buys. She buys  
2 this gun, and it's used in a shooting and linked by shell  
3 casings to a shooting that her husband is a suspect in, and  
4 then the police recover it when they're chasing some other  
5 unidentified male, not Ms. Ellison. They find that gun. The  
6 second gun she purchases is with Quentin Fishburne under --  
7 inside the vehicle that he's driving, which happens to be his  
8 wife's vehicle, and the third gun she purchases is this Smith &  
9 Wesson M&P Shield that you've got that he gets caught with in  
10 2018. Pattern. Again and again and again. She's not buying  
11 these guns for herself.

12                   And what did Special Agent Callahan tell you  
13 about the kind of gun you got here? A .40 caliber, high  
14 recoil, because it's a small gun with a lot of bang. Do we  
15 think Ms. Ellison bought this gun because she wanted this gun?  
16 She bought this gun because Mr. Fishburne wanted this gun.  
17 They don't have to write out some sort of agreement. They  
18 don't have to have a formal business partnership or an LLC.  
19 They just got to get together, and he's got to say, "Hey, I  
20 need you to get me a gun." Is there any, any doubt in your  
21 mind that she bought that gun because Quentin Fishburne asked  
22 her to get him a gun?

23                   Look at the timing of it. He gets arrested in  
24 May of 2014. That Jimenez gun is taken away from him. It's  
25 put in evidence. Before she could even go back and claim the

1 gun, she has gone out and bought another gun, and that's the  
2 gun that he's gotten caught with.

3 At the end of the day, the question is not did  
4 the police do everything perfectly? Was this traffic  
5 checkpoint a model of how to enforce the traffic laws? The  
6 question is is the evidence that we brought sufficient to  
7 eliminate not all the doubt, reasonable doubt. Do you have any  
8 reasonable doubts about the evidence we've brought you? And  
9 the answer is no, because when you step back, and you look the  
10 big picture, all of these individually -- all of these things  
11 individually by themselves are sufficient. When you look at  
12 them all together, that is an inedible, incredible,  
13 unbelievable number of coincidences and connections.

14 The Judge is going to say a little bit about  
15 circumstantial evidence. Again, we've brought you a lot of  
16 direct evidence, testimony. "Hey, it's in his hand." Evidence  
17 about -- showing shell casings matching that crime scene.  
18 Testimony that the gun is right under his seat. But we've  
19 also -- if you look at this entire situation, there's powerful  
20 circumstantial evidence. Here's what the Judge is going to  
21 say. He's going to give you an example of circumstantial  
22 evidence. He's going to say that circumstantial evidence can  
23 be weighed by you in the same way you can weigh direct  
24 evidence.

25 He's going to say that, for example, if you were

1 to go to sleep at night on a cold night and you were to look  
2 outside and the ground is clear when you go to sleep, you wake  
3 up the next morning and the ground is covered by snow. You  
4 didn't see a snowstorm. You didn't actually witness those  
5 flakes falling, but they're really, really powerful evidence  
6 that sometime between when you went to bed and when you woke  
7 up, it snowed, because you know from your common experience  
8 that snow doesn't just, you know, spontaneously appear. Use  
9 your common sense to deduce one fact from the other.

10 when you take the totality of the situations,  
11 all three of the crime scenes we've told you about, the fact  
12 that the same person bought both guns, that both guns are in  
13 vehicles that belong to members of Mr. Fishburne's family that  
14 he's driving. When you take all of those things together,  
15 there's just no way it's a coincidence. There's just no way.

16 Three crime scenes, two guns, one purchaser, all  
17 of them connected by one man, Quentin Fishburne, and zero  
18 reasonable doubt. Find him guilty. Thank you.

19 **THE COURT:** Okay. I'm going to let you go back to  
20 the jury room and relax. I'll send the marshal back to give  
21 you the menus. You can pick out your lunch, and when you come  
22 back, we'll give you the final charge on the law, and by the  
23 time that's over, hopefully your lunch will be here.

24 (Jury out at 12:21 p.m.)

25 **THE COURT:** Anything else?



1 12:21 PM 1 MR. SHAHID: Not by the Defendant.

2 12:21 PM 2 MR. SCHOEN: Nothing from the Government.

3 12:21 PM 3 THE COURT: Okay. why don't y'all come up here for a  
4 second? This is off the record.

5 12:21 PM 5 (Discussion off the record.)

6 (Recess from 12:21 p.m. to 12:43 p.m.)

7 12:43 PM 7 (Call to order of the Court.)

8 12:43 PM 8 THE COURT: Take your seats. Thanks. Anything  
9 before I bring the jury back in?

10 12:43 PM 10 MR. SCHOEN: Nothing from the Government.

11 12:43 PM 11 MR. SHAHID: Not by the Defendant.

12 12:43 PM 12 THE COURT: Okay. At sidebar we discussed which  
13 juror we're going to excuse, and by agreement, the Government  
14 and the Defendant agreed to excuse Juror Thomas. Is that  
15 correct?

16 12:44 PM 16 MR. SHAHID: That's correct.

17 12:44 PM 17 MR. SCHOEN: Yes, Your Honor.

18 12:44 PM 18 THE COURT: Okay. Good. Thank you.

19 (Jury in at 12:44 p.m.)

20 12:46 PM 20 THE COURT: Okay. You can be seated. Thank you.

21 I'm going to give you the closing charge, and  
22 you each have a copy of it. You can follow along with me if  
23 you want to. If you don't want to, you don't have to. So I'm  
24 going to read it.

25 Members of the jury, now that you've heard all

1 the evidence and the arguments by the lawyers, it's my duty to  
2 instruct you on the law that applies to this case. These  
3 instructions will be in three parts. First, the instructions  
4 on general rules that define and control the jury's duties.  
5 Second, the instructions that state the rules of law you must  
6 apply. In other words, what the Government must prove to make  
7 the case. And third, some rules for your deliberations.

8 It is your duty to determine the facts from all  
9 the evidence in the case. To those facts you must apply the  
10 law as I give it to you, and you must follow that law whether  
11 you agree with it or not, and you must not be influenced by any  
12 personal likes, or dislikes, opinions, prejudice or sympathy.  
13 That means you must decide the case solely on the evidence  
14 before you and according to the law. You will recall that you  
15 took an oath promising to do that yesterday.

16 In following my instructions, you must follow  
17 all of them and not single out some and ignore the others.  
18 They are all equally important; and you must not read into  
19 these instructions or anything I may have said or done any  
20 suggestion as to what verdict you should return. That's a  
21 matter entirely for y'all to decide.

22 Now, in determining the facts of the case, you  
23 should consider the following evidence: The sworn testimony of  
24 the witnesses both on direct and cross-examination, regardless  
25 of who called the witness; any exhibits that have been received

1 into evidence; and any facts which all the lawyers have agreed  
2 or stipulated.

3 In reaching your verdict, you may consider only  
4 the testimony and exhibits received into evidence. Certain  
5 things are not evidence, and you may not consider them in  
6 deciding what the facts are. I'll list them for you now.

7 The arguments and the statements by the lawyers  
8 are not evidence. The lawyers are not witnesses. What they've  
9 said in their opening statements, closing arguments, and at  
10 other times is intended to help you interpret the evidence, but  
11 it is not evidence. If the facts as you remember them differ  
12 from the way the lawyers have stated them, your memory of them  
13 controls.

14 Questions and objections by the lawyers are not  
15 evidence. Attorneys have a duty to their client to object when  
16 they believe a question is improper under the rules of  
17 evidence. You should not be influenced by the objection or by  
18 my ruling on it. If the objection was sustained, you should  
19 disregard the question of the lawyer. If it was overruled,  
20 treat the answer as any other. And, of course, anything you've  
21 seen or heard when the Court is not in session is not evidence.  
22 You are to decide this case solely on the evidence received in  
23 this trial.

24 Now, there are two kinds of evidence, direct  
25 evidence and circumstantial evidence. Direct evidence is

1 direct proof of a fact, such as the testimony of an eyewitness.  
2 Circumstantial evidence is indirect evidence; that is, proof of  
3 a chain of facts from which you could find that another exists,  
4 even though it's not been proved to you directly. For example,  
5 if you go to bed on a winter's night and the ground is clear,  
6 and you wake up the next morning and see snow on the ground,  
7 you have circumstantial evidence that it snowed last night.

8 You are entitled to consider both kinds of  
9 evidence. The law permits you to give equal weight to both,  
10 but it is for you to decide how much weight to give to any  
11 evidence. It is for to you decide whether a fact has been  
12 proved by circumstantial evidence. In making that decision,  
13 you must consider all the evidence in the light of reason, your  
14 common sense, and experience.

15 Now, during the trial, items were received into  
16 evidence as exhibits. These exhibits will be sent to the jury  
17 room with you when you begin to deliberate. Examine the  
18 exhibits if you think it'll help in your deliberations.

19 Now, in deciding what the facts are, as I said,  
20 you must consider all the evidence. In doing this, you must  
21 decide which testimony to believe and which testimony not to  
22 believe. You may believe or disbelieve all or any part of any  
23 witness's testimony.

24 In making that decision, you can take into  
25 account a number of factors, including the following: was that

1 witness able to see or hear or know the things about which that  
2 witness testified? How well was the witness able to recall and  
3 describe those things to you? What was the witness's manner  
4 while testifying? Did the witness have an interest in the  
5 outcome of this case or any bias or any prejudice concerning  
6 any party or any matter involved in the case? How reasonable  
7 was the witness's testimony considered in the light of all the  
8 evidence in the case? And had that witness's testimony been  
9 contradicted by what that witness had said or done at another  
10 time or by the testimony of other witnesses or by other  
11 evidence?

12 Now, in deciding whether or not to believe a  
13 witness, keep in mind people sometimes forget things. You need  
14 to consider, therefore, whether a contradiction is an innocent  
15 lapse of memory or an intentional falsehood, and that may  
16 depend on whether it has to do with an important fact or only a  
17 small detail. These are some of the factors you may consider  
18 in deciding whether to believe testimony.

19 Now, the weight of the evidence presented by  
20 each side does not necessarily depend on the number of  
21 witnesses testifying on one side or the other. You must  
22 consider all the evidence in the case, and you may decide that  
23 the testimony of a smaller number of witnesses on one side has  
24 a greater weight than that of a larger number on the other.  
25 All of these are matters to be considered in finding the facts.

1 Now, a witness may be discredited or impeached  
2 by contradictory evidence or by evidence that at some other  
3 time the witness had said or done something, or failed to do or  
4 say something, that is inconsistent with the witness's present  
5 testimony. If you believe any witness has been impeached and  
6 thus discredited, it is your exclusive province to give the  
7 testimony of that witness such credibility, if any, that you  
8 think it deserves.

9 You heard testimony from an expert witness. An  
10 expert is allowed to express his opinion on those matters about  
11 which he has special knowledge and training. Expert testimony  
12 is presented to you on the theory that someone who is  
13 experienced in the field can assist you in understanding the  
14 evidence or in reaching an independent decision on the facts.

15 In weighing the expert's testimony, you may  
16 consider the expert's qualifications, his opinions, his reasons  
17 for testifying, as well as all the other considerations that  
18 ordinarily apply when you're deciding whether to believe a  
19 witness's testimony.

20 You may give expert testimony whatever weight  
21 you find it deserves in the light of all the evidence in the  
22 case. You should not, however, accept this witness's testimony  
23 merely because he's an expert, nor should you substitute it for  
24 your own reason, judgment, and common sense. The determination  
25 of the facts in this case rests solely with y'all.

1 Now, although Mr. Fishburne has been indicted,  
2 you must remember that an indictment is only an accusation. It  
3 is not evidence. Mr. Fishburne has pleaded not guilty to the  
4 Indictment. As a result of his plea of not guilty, the burden  
5 is on the Government to prove guilt beyond a reasonable doubt.

6 It is never the burden for any defendant to  
7 prove himself innocent. This burden never shifts to a  
8 defendant for the simple reason that the law never imposes upon  
9 a defendant in a criminal case the burden or duty of testifying  
10 or calling any witnesses or producing any evidence.

11 The law presumes Mr. Fishburne to be innocent of  
12 these charges against him. I, therefore, instruct you that  
13 Mr. Fishburne is to be presumed by you to be innocent at this  
14 time and throughout your deliberations unless you, as a jury,  
15 are satisfied that the Government has proved his guilt beyond a  
16 reasonable doubt.

17 Mr. Fishburne began the trial here with a clean  
18 slate and a presumption of innocence. That remains with him  
19 even now as I instruct you and will continue with him in your  
20 deliberations unless you are convinced that Government has  
21 proven his guilt beyond a reasonable doubt.

22 If the Government has failed to carry its  
23 burden, it would be your duty under the oath that you took at  
24 the beginning of this case to find Mr. Fishburne not guilty.

25 Now, a defendant in a criminal case has an

1 absolute right under our Constitution not to testify. The fact  
2 that Mr. Fishburne did not testify must not be discussed or  
3 considered by you in any way when deliberating and reaching  
4 your verdict.

5 No presumption of guilt may be raised and no  
6 inference of any kind may be drawn from the fact that a  
7 defendant decided to exercise his privilege under the  
8 Constitution and not testify.

9 As I have told you before, it is not up to  
10 Mr. Fishburne to prove that he is innocent. It is up to the  
11 Government to prove that Mr. Fishburne is guilty beyond a  
12 reasonable doubt.

13 You are to perform the duty of finding the facts  
14 without bias or prejudice as to any party. You are to perform  
15 your final duty -- excuse me -- in an attitude of complete  
16 fairness and impartiality.

17 This case is important to the Government because  
18 the enforcement of criminal laws is a matter of prime concern  
19 to the community. Equally, it is important to Mr. Fishburne  
20 who is charged with serious crimes.

21 The fact that the prosecution is brought in the  
22 name of the United States of America entitles the Government to  
23 no greater consideration than that accorded to any party to any  
24 other litigation. By the same token, it's entitled to no less  
25 consideration. All parties, whether the Government or



1 individuals, stand as equals at the bar of justice.

2 Now, you have heard the testimony of law  
3 enforcement officials. The fact that a witness may be employed  
4 by the federal government or state agency as a law enforcement  
5 official does not mean that his testimony is necessarily  
6 deserving of more or less consideration or greater or lesser  
7 weight than that of any other witness. It is your decision  
8 after reviewing all the evidence whether to accept the  
9 testimony of the law enforcement witness and to give that  
10 testimony whatever weight you find it deserves just as you  
11 would any other witness.

12 Now, you've heard testimony of witnesses and  
13 argument by counsel that the Government did not use specific  
14 investigative techniques. You may consider these facts in  
15 deciding whether the Government has met its burden, because as  
16 I told you, you should all look to the evidence in deciding  
17 whether the Defendant is guilty. However, you are also  
18 instructed that there is no legal requirement that the  
19 Government is required to use any specific investigative  
20 techniques to prove its case.

21 Now, the question of possible punishment of  
22 Mr. Fishburne is no concern to you and should not in any sense  
23 enter into or influence your deliberations. If a defendant in  
24 any case is found guilty, the duty of imposing the sentence  
25 rests exclusively with me.

1                   Your function is to weigh the evidence in the  
2 case and to determine whether or not the Government has proven  
3 that Mr. Fishburne is guilty beyond a reasonable doubt solely  
4 on the basis of the evidence. Under your oath as jurors, you  
5 may not allow consideration of the punishment that may be  
6 imposed upon Mr. Fishburne if he's convicted to influence your  
7 verdict in any way or enter into your deliberations.

8                   Some of y'all have taken notes at trial.  
9 Remember that these notes are for your own personal use. They  
10 are not to be given or read to anyone else, and they are not to  
11 be used in place of your memory.

12                  Now, the Second Superseding Indictment contains  
13 three counts. You must consider each count separately and  
14 return a separate verdict of guilty or not guilty for each.  
15 Whether you find Mr. Fishburne guilty or not guilty of one  
16 offense should not affect your verdict on any other offense  
17 charged. I'm going to give you instructions pertinent to the  
18 charges against Mr. Fishburne.

19                  Now, Counts 1 and 5 are felon in possession of a  
20 firearm. Title 18 United States Code Section 922(g)(1)  
21 provides that it will be unlawful for any person who has been  
22 convicted in any court of a crime punishable by imprisonment  
23 for a term exceeding one year to possess a firearm or  
24 ammunition.

25                  Counts 1 and 5 charge Mr. Fishburne with

1 violating Section 922(g) of Title 18 of the United States Code  
2 on two separate occasions, March 31, 2018, and May 2, 2014,  
3 respectively. In order for you to find Mr. Fishburne guilty of  
4 this charge, the Government must prove the following elements  
5 beyond a reasonable doubt as to each count.

6 Number 1, that Mr. Fishburne had previously been  
7 convicted of a crime punishable by a term of imprisonment  
8 exceeding one year. Number 2, that Mr. Fishburne knew he had  
9 been previously convicted of a crime punishable by a term of  
10 imprisonment for one year. Number 3, that the firearm or  
11 ammunition had traveled in interstate or foreign commerce at  
12 some point during its existence. And number 4, that  
13 Mr. Fishburne knowingly possessed a firearm or ammunition; that  
14 is, Mr. Fishburne knew the item was a firearm or ammunition and  
15 the possession was voluntary and intentional.

16 Now, the parties have stipulated to the  
17 existence of the first, second, and third elements, meaning the  
18 Government has satisfied its burden of proving those elements  
19 beyond a reasonable doubt. However, the Government still has  
20 the burden to prove element four beyond a reasonable doubt.

21 If you find from your consideration of all the  
22 evidence that the Government has proven each and every one of  
23 those elements beyond a reasonable doubt as to each count, then  
24 you should find Mr. Fishburne guilty of Counts 1 and 5. If, on  
25 the other hand, you find from your consideration of all the

1 evidence that the Government has not proven each of these  
2 elements beyond a reasonable doubt, then you should find  
3 Mr. Fishburne not guilty of Counts 1 and 5.

4 Now, Count 2 is conspiracy to make false  
5 statements in furtherance of the conspiracy. Title 18 USC  
6 Section 371 makes it a federal crime for anyone to conspire  
7 with someone else to do something which, if actually carried  
8 out, would be a violation of federal law. Title 18 USC Section  
9 922(a)(6) makes it a crime for a person to make a false  
10 statement to a licensed firearms dealer in connection with the  
11 acquisition of a firearm.

12 Count 2 charges that beginning at a time unknown  
13 and continuing through August 15th, 2018, Mr. Fishburne and  
14 Ms. Ellison unlawfully, knowingly, and willfully did conspire,  
15 combine, confederate, and agree together with each other and  
16 persons known and unknown to execute a scheme of knowingly and  
17 willfully violating Section 922(a)(6); that is, to make false  
18 statements to licensed firearms dealers in connection with the  
19 acquisition of firearms.

20 Now, in order for you to find Mr. Fishburne  
21 guilty of this charge, the Government must prove each of the  
22 following elements beyond a reasonable doubt: Number 1, that  
23 two or more persons entered into an unlawful agreement starting  
24 at a time unknown and continuing through August 15th, 2018 to  
25 commit the crime of making false statements to licensed

1 firearms dealers in connection with the acquisition of  
2 firearms; number 2, that Mr. Fishburne knew of the conspiracy;  
3 and number 3, that Mr. Fishburne knowingly and voluntarily  
4 became a part of the conspiracy.

5 Under the law, a conspiracy is a kind of  
6 partnership in criminal purposes. Willful participation in  
7 such a scheme is sufficient to complete the offense of  
8 conspiracy even though the ultimate criminal object or objects  
9 of the conspiracy are not accomplished or carried out.

10 In order to establish a conspiracy offense, it  
11 is not necessary for the Government to prove that the members  
12 of the conspiracy had entered into any formal type of  
13 agreement. Existence of a conspiratorial agreement need not be  
14 proved by direct evidence, but may be inferred from the facts  
15 and circumstances of the case.

16 If you are satisfied that the conspiracy charged  
17 in the Indictment existed, you must next whether -- find  
18 whether Mr. Fishburne was a member of that conspiracy. In  
19 deciding whether Mr. Fishburne was, in fact, a member of the  
20 conspiracy, you should consider whether that Defendant  
21 knowingly and willfully joined the -- willfully joined the  
22 conspiracy.

23 The word "knowingly" as that term has been used  
24 in these instructions means that the act was done voluntarily  
25 and intentionally and not because of mistake or accident.

1           The word "willfully" as that term is being used  
2     in these instructions means that the fact was committed -- the  
3     act was committed voluntarily and purposefully with the  
4     specific intent to do something the law forbids; that is to  
5     say, with a bad purpose either to disobey or disregard the law.

6           The extent of a defendant's participation has no  
7     bearing on the issue of the Defendant's guilt. A conspirator's  
8     liability is not measured by the extent or duration of his  
9     participation. Indeed, each member may perform separate and  
10    distinct acts and may perform them at different times. Some  
11    conspirators play major roles, while others play minor roles in  
12    the scheme. An equal role is not what the law requires. In  
13    fact, even a single act may be sufficient to draw a defendant  
14    within the ambit of the conspiracy.

15          I want to caution you, however, that a  
16    defendant's mere presence at the scene of an alleged crime does  
17    not by itself make him a member of the conspiracy. Similarly,  
18    mere association with one or more members of the conspiracy  
19    does not automatically make a defendant a member of the  
20    conspiracy. A person may know or be friendly with a criminal  
21    without being a criminal himself. Mere similarity of conduct  
22    or the fact that they may have gotten together and discussed  
23    common aims and interests does not necessarily establish proof  
24    of the existence of a conspiracy.

25          I also want to caution you that mere knowledge

1 or acquiescence without participation in the unlawful plan is  
2 not sufficient. Moreover, the fact that the acts of a  
3 defendant without knowledge merely happen to further a purpose  
4 or objective of the conspiracy does not make a defendant a  
5 member. More is required under the law. What is necessary is  
6 that the -- a defendant must have participated with the  
7 knowledge of at least some of the purposes or objectives of the  
8 conspiracy and with the intention of accomplishment of those  
9 unlawful acts.

10 Now, once the existence of a conspiracy is  
11 established, evidence establishing beyond a reasonable doubt a  
12 connection of Mr. Fishburne with the conspiracy, even though  
13 the connection is slight, is sufficient to prove that he's --  
14 he was a knowing participant in the conspiracy.

15 In your consideration of the evidence, you  
16 should determine whether or not Mr. Fishburne knowingly took  
17 part in a conspiracy to make false statements as to licensed  
18 firearms dealers in connection with the acquisition of  
19 firearms. The Government can prove a conspiracy by showing an  
20 agreement between Mr. Fishburne and Ms. Ellison that  
21 Ms. Ellison would make false statements with regard to the  
22 acquisitions of firearms by, for example, indicating that she  
23 was the actual purchaser of the firearm when, in fact, she was  
24 buying the firearm for Mr. Fishburne.

25 If the Government proves the necessary elements

1 beyond a reasonable doubt with respect to the conspiracy, you  
2 should find Mr. Fishburne guilty of Count 2. If, on the other  
3 hand, you find from your consideration of all of the evidence  
4 that the Government has failed to prove any one of these  
5 elements beyond a reasonable doubt, you should find  
6 Mr. Fishburne not guilty of Count 2.

7 Now, you've heard evidence relating to a Bersa 9  
8 millimeter pistol. Evidence relating to the Bersa 9 millimeter  
9 is to be considered by you only for the limited purpose of  
10 impeaching the statements of Renata Ellison or evaluating her  
11 intent. The Government has not charged Mr. Fishburne with any  
12 crimes related to the Bersa 9 millimeter. Evidence relating to  
13 the Bersa 9 millimeter should be considered by you only as it  
14 relates to the believability of the statements made by  
15 Ms. Ellison or as it relates to the intent of Ms. Ellison and  
16 not as evidence of any crime committed by Mr. Fishburne or  
17 evidence of his intent.

18 You will note that the Indictment charges that  
19 the offenses were committed on or about certain dates. Proof  
20 need not establish with certainty the exact date of an alleged  
21 offense. It is sufficient if the evidence in the case  
22 establishes beyond a reasonable doubt that an offense was  
23 committed on the dates reasonably near the dates alleged.

24 Now, what is possession? A person possesses an  
25 object if he knowingly has the ability and the intention to



1 exercise control over that object, either directly or through  
2 others. A person may possess an object even if he is not in  
3 physical contact with it and even if he doesn't own it. More  
4 than one person can possess an object. If two or more persons  
5 share possession, that is called joint possession. If only one  
6 person possesses an object, it is called sole possession. The  
7 term "possession" in these instructions includes both joint and  
8 sole possession.

9 Now, a person's flight immediately after the  
10 commission of a crime or after being accused of committing a  
11 crime is not enough by itself to establish guilt, but it is a  
12 fact that may be considered by you as evidence of guilt.  
13 Flight under the circumstances may be motivated by a variety of  
14 factors, some of which are fully consistent with innocence.  
15 You must decide whether there is evidence of flight. If you  
16 decide there is evidence of flight, you must consider then  
17 whether the flight shows a consciousness of guilt.

18 Now, when y'all go back and get your lunch, the  
19 first thing y'all need to do is elect a foreperson. The  
20 foreperson will preside over your deliberations and speak for  
21 you here in open court.

22 Each of you must decide this case for yourself,  
23 but you should do so only after you have considered all the  
24 evidence, discussed it fully with your fellow jurors and  
25 listened to the views of the other jurors. Don't be afraid to

1 change your opinion if a discussion persuades you that it  
2 should, but don't come to a decision simply because the other  
3 jurors think it's right.

4 It's important that each of you attempt to reach  
5 a unanimous verdict, but, of course, only if each of you can do  
6 so after making your own conscious decision. Don't change an  
7 honest belief about the weight and effect of the evidence  
8 simply to reach a verdict. In other words, don't change your  
9 opinion solely for the sake of reaching a unanimous verdict.

10 After you've reached a unanimous agreement on a  
11 verdict, the foreperson will fill in this form, which is the  
12 verdict form that will be given to you. You sign and date them  
13 and advise the marshal outside your door that you're ready to  
14 return to the courtroom.

15 If it becomes necessary during your  
16 deliberations to communicate with me, you can send a note  
17 through the marshal signed by your foreperson or by one or more  
18 members of the jury. No member of the jury should ever attempt  
19 to communicate with me except by a signed writing, and I will  
20 communicate with any member of the jury on anything concerning  
21 this case only in writing or orally in open court.

22 Remember you're not to tell anyone, including  
23 me, how the jury stands numerically or otherwise, until after  
24 you've reached a unanimous verdict or have been discharged. As  
25 I said, this is the verdict form right here, got a blue back on

1 it. It's pretty simple.

2 First, we, the jury following due deliberations  
3 in the above matter, unanimously return the following verdict.  
4 Count 1, felon possession of firearm, March 31, 2018. As to  
5 Count 1, we unanimously find the Defendant, Quentin John  
6 Fishburne, guilty or not guilty. Just check one of the two.

7 Second, Count 2, conspiracy to violate Title 18 USC  
8 Section 922(a)(6). As to Count 2, we unanimously find the  
9 Defendant, Quentin John Fishburne, not guilty or guilty. Just  
10 check a box.

11 Count 5. As to Count 5, we unanimously find the  
12 Defendant, Quentin on Fishburne, not guilty or guilty.  
13 Foreperson sign it, date it, knock on the door, and come back,  
14 and we'll take the verdict.

15 All right. Y'all can now retire to your jury  
16 room, and hopefully your lunch and is there and begin your  
17 deliberations. If all of y'all will go back except for  
18 Mr. Thomas. You have to stay here with me. So everybody else  
19 has to go back. You'll get your lunch, I promise, Mr. Thomas.

20 **THE ALTERNATE JUROR:** Oh, I don't care.

21 **THE COURT:** Then I'll eat your lunch.

22 (Jury out at 1:07 p.m.)

23 **THE COURT:** Okay. Mr. Thomas, in criminal cases you  
24 have to have 12 jurors. You can't have 13. You can't have 11.  
25 So we bring in extra people. As a matter of fact, we selected

1 14 when y'all were selected, and one of the -- one of the other  
2 jurors had a medical emergency, so couldn't show up. So we  
3 want to thank you for your service in this case. The good news  
4 is you don't have to deliberate. The bad news is you don't get  
5 to deliberate, and the good news is you get to go home right  
6 now if you want to. Okay? Thank you very much.

7 THE ALTERNATE JUROR: All right. Thank you. Do I  
8 need to give y'all this?

9 THE COURT: You can keep it, or you can give it to  
10 us. No souvenirs, huh?

11 THE ALTERNATE JUROR: No, sir.

12 THE COURT: Okay. No problem.

13 (Alternate juror excused.)

14 THE COURT: Anything further?

15 MR. SHAHID: Can we be excused?

16 THE COURT: Just make sure that Catina has your cell  
17 phone, and we'll contact you when they have a verdict or a  
18 question, okay?

19 MS. HENDERSON: Yes, sir.

20 THE COURT: Thank y'all.

21 MS. HENDERSON: Thank you.

22 (Recess from 1:09 p.m. to 1:11 p.m.)

23 (Call to order of the Court.)

24 THE COURT: Okay. Speak or forever hold your peace.

25 MR. SHAHID: I need to make a motion to dismiss,

1 Judge. I believe the Government has failed to prove their case  
2 beyond a reasonable doubt as to all three counts, particularly  
3 as to Count 2, the conspiracy.

4 THE COURT: Better late than never. I'll take your  
5 motion under advisement and deny it, okay? Anything else?

6 MR. SHAHID: That's it. Thank you.

7 (Recess from 1:12 p.m. to 1:52 p.m.)

8 (Call to order of the Court.)

9 THE COURT: Take your seats. Thanks. Y'all got  
10 copies of the question?

11 MR. SCHOEN: Yes, Your Honor.

12 MR. SHAHID: I do.

13 THE COURT: All right. Do you have an answer?

14 MR. SHAHID: I think the answer is "no".

15 THE COURT: Okay.

16 MR. SCHOEN: I think it depends. I think the  
17 question is -- it would depend on the situation. I don't know  
18 that a simple "no" answer would be adequate. If the person is  
19 carrying on their body, then I think you make an argument that  
20 it's not possession. They got it sitting in the middle of a  
21 center console and you know it's there, and you're riding with  
22 them --

23 THE COURT: The question is, "Is it illegal for a  
24 convicted felon to be in a car with another individual who is  
25 legally carrying a firearm?" which means if he had a carry

1 license, he could carry it anywhere.

2 MR. SHAHID: You can't be a convicted felon and  
3 knowingly possess a firearm. That's -- I mean, that's -- so if  
4 someone else has a gun who's legally carrying a gun --

5 MR. SCHOEN: Does the fact that the other person  
6 who's in the vehicle has a legal right to have a gun destroy  
7 the possibility of joint possession? I mean, if both people --  
8 if you've got a gun sitting in the center console --

9 THE COURT: We don't have a factual situation because  
10 we got two guns in the first time and we have one gun -- two  
11 guns and two persons the first time and one gun and one person  
12 the second time, so I don't think joint possession is really an  
13 issue.

14 MR. SHAHID: Also interesting word they're using  
15 here, Judge. "Carrying" a firearm, not -- didn't use the word  
16 "possessing". They used the word "carrying". It's layman's  
17 thought process obviously, but I think if we get too far into  
18 kind of giving them fact scenarios, it's just going to confuse  
19 the question. I think it's a very simple "yes" or "no" answer  
20 we give them. Simply being with another person who's legally  
21 carrying a firearm in an automobile is not illegal.

22 MR. SCHOEN: The instructions the ATF give the  
23 convicted felons is they need to stay away from firearms, can't  
24 have them in their vehicles, can't ride around with people who  
25 got them. We have cases where felons riding around with a

1 girlfriend's gun in the car poses a difficult -- different  
2 situation, but I think it just depends. If the Court wants to  
3 give the answer "no", then obviously I think our answer would  
4 be it depends on whether or not they are jointly possessing  
5 that firearm, whether or not they're exercising dominion and  
6 control over it, whether they have any intent to exercise  
7 dominion and control over it. I don't think that if you ride  
8 around with a girlfriend who's got a gun sitting there in the  
9 center console in between the two of you, and you know it's  
10 there and have an intent to possess it, that having your  
11 girlfriend gets you off. It doesn't destroy the possibility of  
12 joint possession, but I'm fine with whatever answer the Court  
13 wants to give.

14 THE COURT: Or no answer at all.

15 MR. SHAHID: Sir?

16 THE COURT: Or no answer at all.

17 MR. SHAHID: Well, that's going to send them into a  
18 tailspin.

19 THE COURT: Well --

20 MR. SHAHID: If it's a simple question, if you're  
21 simply asking is it illegal for a convicted felon to be in a  
22 car with another person who is legally carrying a firearm, the  
23 simple answer to that is "no". The other facts come into play  
24 that may change that answer.

25 THE COURT: Okay. I guess the simple answer is

1 "Depending upon the circumstances, no."

2 MR. SCHOEN: "Not necessarily" would be the answer  
3 probably.

4 MR. SHAHID: "Depending on the circumstances, no."

5 THE COURT: Right, or "not necessarily". It's not  
6 always.

7 MR. SCHOEN: It just depends on the circumstance.

8 MR. SHAHID: Or you can answer it, say simply -- the  
9 simple question provides a simple answer of "no". If there's  
10 more facts behind it, there may be a different answer. I don't  
11 think we need to complicate this too much. I think it's very  
12 clear.

13 MR. SCHOEN: I just don't want the jury to have the  
14 impression that if they were to believe that this guy, Maurice  
15 White, was legally allowed to have firearms, that they can roll  
16 around with two guns sitting on the floorboard right next to  
17 Mr. Fishburne. As long as he's got somebody who's not a felon  
18 in the car with him, he can have these guns in the car with  
19 him. I don't think that's an accurate statement of the law.

20 MR. SHAHID: You still have to exercise dominion and  
21 control over the gun.

22 THE COURT: There is no evidence in this case to  
23 support an answer to that question, because we don't know who  
24 was with Mr. Fishburne at the time, and we don't whether he was  
25 a convicted felon or not at the time of the first seizure. At



1 the time of the chase, he was on one side. The other guy was  
2 on the other side. They both took off, and unfortunately,  
3 Mr. Fishburne was closest to the police officer, so he got  
4 caught, but we don't know whether that fellow was -- that  
5 person was legally or illegally possessing a firearm. There's  
6 no factual basis for that.

7 MR. SHAHID: well, Judge, that's sort of the --  
8 listen, you've told this jury in your instructions they are to  
9 consider the facts that is in front of them, period. So we  
10 can't go too far adrift on adding facts that they don't -- they  
11 don't have. You know, I think we can debate whether or not  
12 this question applies to either Count number 1 or Count number  
13 5. I thought initially it may apply to Count number 5, but  
14 thinking about it, it may apply to Count number 1. We just  
15 don't know. I mean, I think that if a person is legally  
16 carrying a firearm and driving a car -- it doesn't even say  
17 driving a car; is in a car with another. So it doesn't  
18 matter -- they didn't make point of it being a driver or a  
19 passenger. You just have to answer the question in the  
20 simplest form. That simple question requires a simple answer  
21 of "no".

22 THE COURT: No, that question is a simple answer of,  
23 "It depends upon the circumstances".

24 MR. SCHOEN: Not necessarily.

25 THE COURT: It is not 100% no.

1           **MR. SHAHID:** Judge, I disagree, because I think it's  
2 a very simple question. "Is it illegal for a convicted felon  
3 to be in a car with another who was legally carrying a  
4 firearm?"

5           **MR. SCHOEN:** It depends. You can legally carry a  
6 firearm in the center console of your car. You can legally  
7 carry a firearm in the glove box of your car. If the -- if the  
8 girlfriend's driving the car, and her gun is in the glove box,  
9 and he knows the gun is in the glove box, I think there's a  
10 reasonable argument like just bringing your girlfriend along  
11 with you doesn't get you a gun. Depends on whether he's got  
12 the intent to exercise dominion and control. Do I want to  
13 indict that case and try it? Probably not. But as a question  
14 of law, I don't think that the answer is a simple "no". It's  
15 "not necessarily".

16           **MR. SHAHID:** 99% of the time the police officer makes  
17 that stop and finds the gun, the officer is going to say,  
18 "Whose gun is it?" And if the legal person says, "It's mine,"  
19 then that's going to end the inquiry. Like Mr. Schoen said,  
20 nobody is going to charge that case.

21           **MR. SCHOEN:** I might if I can show that the other  
22 person got caught with a gun a number of other times.

23           **THE COURT:** If it's a slow month. Okay.

24           **MR. SHAHID:** It's --

25           **THE COURT:** I think the answer to the question is

1 "not necessarily".

2 MR. SHAHID: well --

3 THE COURT: It's not an absolute "no", because that's  
4 not the right answer, because you've acknowledged that there  
5 are situations where someone could be in a car, and the  
6 passenger could be legally or the driver could be legally  
7 carrying. The other person -- if the other person has  
8 knowledge of the gun, the answer is "yes". If the other person  
9 doesn't have any knowledge of the gun, the answer is "no".

10 MR. SHAHID: why don't we answer it this way? "The  
11 simple answer is no; however, other factors may change" --  
12 "other factors may make it illegal, depending on other facts."

13 THE COURT: well, but that means by saying that, that  
14 the proper answer is not "no", because you acknowledge that  
15 there is situations where that could be -- I mean, that could  
16 be possible, right?

17 MR. SHAHID: If I'm in a car --

18 THE COURT: Let's say this. Let's say Ms. Ellison is  
19 driving the car. Mr. Fishburne is in the passenger's seat.  
20 It's Ms. Ellison's pistol, because they all are, and it's  
21 sitting at Mr. Fishburne's feet. He could be found guilty of  
22 possessing a firearm, right?

23 MR. SHAHID: He could be charged, yes.

24 THE COURT: And at that time if, in fact, Ms. Ellison  
25 was possessing that gun, she could be -- I mean, she had

2 : 0 1 P M 1 dominion and control of it and ownership of it, and she's  
2 : 0 1 P M 2 legally able to do that, then how could I answer the question  
2 : 0 1 P M 3 "no"?

2 : 0 1 P M 4 MR. SHAHID: So you're going to give an answer of "it  
2 : 0 1 P M 5 depends"?

2 : 0 1 P M 6 THE COURT: I said I think the answer might be,  
2 : 0 1 P M 7 "Depending upon the circumstances."

2 : 0 1 P M 8 MR. SHAHID: "Depending upon other circumstances."

2 : 0 2 P M 9 THE COURT: Or I can just not answer the question,  
2 : 0 2 P M 10 because, you know, it really doesn't have anything to do with  
2 : 0 2 P M 11 this case.

2 : 0 2 P M 12 MR. SCHOEN: I'm okay with either no answer at all,  
2 : 0 2 P M 13 it's just not applicable, or "not necessarily" as being the  
2 : 0 2 P M 14 answer. I think those are accurate. I just don't want any  
2 : 0 2 P M 15 inaccurate statement.

2 : 0 2 P M 16 THE COURT: "Not necessarily" good enough for you?

2 : 0 2 P M 17 MR. SHAHID: I'd rather have "it depends".

2 : 0 2 P M 18 THE COURT: I know what you'd rather have. You'd  
2 : 0 2 P M 19 rather have hair, just like I would.

2 : 0 2 P M 20 MR. SHAHID: I'd rather be tall, too. That boat  
2 : 0 2 P M 21 sailed out of here. Judge, I prefer that you answer the  
2 : 0 2 P M 22 question with, "It depends on other circumstances."

2 : 0 2 P M 23 THE COURT: Okay. "It depends on the circumstances"?

2 : 0 2 P M 24 MR. SHAHID: That's fine.

2 : 0 2 P M 25 THE COURT: Period?

2 : 0 3 P M 1 MR. SHAHID: You okay with that?

2 : 0 3 P M 2 THE COURT: How about, "Not necessarily. It depends  
2 : 0 3 P M 3 on the circumstances"?

2 : 0 3 P M 4 MR. SHAHID: I like it without the "not necessarily"  
2 : 0 3 P M 5 part of it. It just -- "It depends on other circumstances."

2 : 0 3 P M 6 MR. SCHOEN: why is that -- the answer is -- the  
2 : 0 3 P M 7 question is is it illegal, and you're saying it's not  
2 : 0 3 P M 8 necessarily illegal. It depends on the circumstances. I feel  
2 : 0 3 P M 9 like that's --

2 : 0 3 P M 10 MR. SHAHID: Not necessarily. It depends on -- okay.  
2 : 0 3 P M 11 That's fine.

2 : 0 4 P M 12 THE COURT: Okay. I'll just send that -- I just  
2 : 0 4 P M 13 wrote down, "Not necessarily", period. "It depends on the  
2 : 0 4 P M 14 circumstances", period. I'll just give that to the marshal and  
2 : 0 4 P M 15 give it back to them.

2 : 0 4 P M 16 MR. SCHOEN: Thank you, Your Honor.

17 (Recess from 2:04 p.m. to 3:26 p.m.)

3 : 2 6 P M 18 (Call to order of the Court.)

3 : 2 6 P M 19 THE COURT: Take your seats. Thanks. I understand  
3 : 2 6 P M 20 we've got a verdict, so if you want to bring the jury in.

3 : 2 7 P M 21 THE MARSHAL: Yes, sir.

22 (Jury in at 3:27 p.m.)

3 : 2 8 P M 23 THE COURT: Y'all can sit. Mr. Foreperson, I  
3 : 2 8 P M 24 understand you and the jury have reached a unanimous agreement  
3 : 2 8 P M 25 on the verdict?

3 : 2 8 P M 1 THE FOREPERSON: Yes, sir.

3 : 2 8 P M 2 THE COURT: would you please hand it to the marshal  
3 : 2 8 P M 3 for me?

3 : 2 8 P M 4 THE MARSHAL: Here you go, Your Honor.

3 : 2 8 P M 5 THE COURT: Thank you. Okay.

3 : 2 8 P M 6 COURTROOM DEPUTY: May it please the Court, in the  
3 : 2 8 P M 7 matter of United States of America v. Quentin Fishburne, we,  
3 : 2 9 P M 8 the jury, as to Count 1, we unanimously find that the  
3 : 2 9 P M 9 Defendant, Quentin John Fishburne, guilty. As to Count 2, we  
3 : 2 9 P M 10 unanimously find the Defendant, John Quentin -- Quentin John  
3 : 2 9 P M 11 Fishburne, guilty. As to Count 5, we unanimously find the  
3 : 2 9 P M 12 Defendant, Quentin John Fishburne, guilty. Signed, foreperson,  
3 : 2 9 P M 13 March 3rd, 2020, in Charleston, South Carolina.

3 : 2 9 P M 14 THE COURT: Ladies and gentlemen of the jury, is that  
3 : 2 9 P M 15 your verdict?

3 : 2 9 P M 16 THE JURY: Yes.

3 : 2 9 P M 17 THE COURT: Do you want to poll the jury?

3 : 2 9 P M 18 MR. SHAHID: Please.

3 : 2 9 P M 19 THE COURT: Okay.

3 : 2 9 P M 20 COURTROOM DEPUTY: Ladies and gentlemen of the jury,  
3 : 2 9 P M 21 if this is your true and correct verdicts, please answer "yes".

3 : 2 9 P M 22 Mr. Evans?

3 : 2 9 P M 23 A JUROR: Yes.

3 : 2 9 P M 24 COURTROOM DEPUTY: westfall?

3 : 2 9 P M 25 A JUROR: Yes.

3 : 2 9 P M 1 COURTROOM DEPUTY: Just-Bourgeois?

3 : 2 9 P M 2 A JUROR: Yes.

3 : 2 9 P M 3 COURTROOM DEPUTY: Shumpert?

3 : 2 9 P M 4 A JUROR: Yes.

3 : 2 9 P M 5 COURTROOM DEPUTY: Aiello?

3 : 2 9 P M 6 A JUROR: Yes.

3 : 2 9 P M 7 COURTROOM DEPUTY: Brandon?

3 : 2 9 P M 8 A JUROR: Yes.

3 : 2 9 P M 9 COURTROOM DEPUTY: Todd IV?

3 : 2 9 P M 10 A JUROR: Yes.

3 : 2 9 P M 11 COURTROOM DEPUTY: Kimble?

3 : 2 9 P M 12 A JUROR: Yes.

3 : 2 9 P M 13 COURTROOM DEPUTY: Jenkins?

3 : 3 0 P M 14 A JUROR: Yes.

3 : 3 0 P M 15 COURTROOM DEPUTY: Henderson?

3 : 3 0 P M 16 A JUROR: Yes.

3 : 3 0 P M 17 COURTROOM DEPUTY: Hosler?

3 : 3 0 P M 18 A JUROR: Yes.

3 : 3 0 P M 19 COURTROOM DEPUTY: Miller?

3 : 3 0 P M 20 A JUROR: Yes.

3 : 3 0 P M 21 COURTROOM DEPUTY: If it pleases the Court, the jury  
3 : 3 0 P M 22 has answered in the affirmative.

3 : 3 0 P M 23 THE COURT: Okay. All right. Ladies and gentlemen  
3 : 3 0 P M 24 of the jury, thank you very much for your service in this case.  
3 : 3 0 P M 25 It was a short case, but it was a very important case to both

3 : 3 0 P M 1 the Defendant and the Government. We all appreciate your  
3 : 3 0 P M 2 participation, and if y'all go back to the jury room, I'll send  
3 : 3 0 P M 3 Catina back, because I understand one of you may have parked on  
3 : 3 0 P M 4 the street at a meter, so you'll probably get a ticket, so  
3 : 3 0 P M 5 Catina will fix it for you. So you can go back to the jury  
3 : 3 0 P M 6 room.

7 (Jury out at 3:30 p.m.)

3 : 3 1 P M 8 THE COURT: Okay, Mr. Shahid, you have whatever time  
3 : 3 1 P M 9 the rules say to make an appeal, okay?

3 : 3 1 P M 10 MR. SHAHID: I will do that.

3 : 3 1 P M 11 THE COURT: Anything else from anybody else?

3 : 3 1 P M 12 MR. SCHOEN: Nothing.

3 : 3 1 P M 13 THE COURT: That y'all very much.

3 : 3 1 P M 14 MR. SCHOEN: Thank you, Your Honor.

3 : 3 1 P M 15 (End of proceedings.)  
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UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

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I, Tana J. Hess, Official Court Reporter for the United States District Court, Middle District of Florida, certify, pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcription of the stenographic notes taken by the undersigned in the above-entitled matter (Pages 207 through 295 inclusive) and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States of America.



Tana J. HESS, CRR, RMR, FCRR  
Official Court Reporter  
United States District Court  
Middle District of Florida  
Tampa Division  
Date: February 16, 2022